SUPREME COURT OF THE UNITED STATES.

No. 306.

THE SHIP "MAGGIE HAMMOND," ETC., AMASA DURKEE, CLAIMANT, APPELLANT,

vs.

THOMAS MORLAND, CHARLES STANHOPE WATSON, AND JAMES ROSE.

ADDITIONAL EVIDENCE.

1 In Supreme Court of the United States.

SHIP "MAGGIE HAMMOND" }
vs. }
THOMAS MORELAND & OTHERS. }

[SEAL.]

Interrogatories to be propounded to witnesses to be examined at Liver pool, England, on behalf of Amasa Durkee, claimant and respondent, in the above-entitled cause.

1. State whether you have any and what knowledge or information, in regard to the navigation and trade between Great Britain and Canada, and, more particularly, in regard to the dispatch and loading of ships in British for Canadian ports.

2. State what is the latest period of the year that you would consider it safe to despatch a vessel from Cardiff for Montreal, Canada.

2 3. State what is the usual period in the spring for the first vessels to leave your port for Montreal.

4. State what was the latest period in the year 1866 when vessels left your port for Montreal. State, also, whether any vessel could have been chartered in your port, in the year 1866, after the 1st of September, to take a cargo of about six hundred and fifty tons of iron to Montreal.

5. Please annex to your answer a list of the earliest clearances of ships for Montreal, from your port, in the springs of the years 1860 to 1867, inclusive; and, likewise, a list of the latest clearances, for the same port, in the autumns of the same years.

3 6. State if there are any, and, if any, what rules and regulations of the insurance companies of Great Britain, having reference to the risks on vessels sailing from British for Canadian ports, before any

fixed period in the spring, and after any fixed period in the autumn. State fully what these rules or regulations are. State, also, what is the latest period of sailing for Montreal, upon which vessels can be insured by the insurance companies of Great Britain; and what is the difference of premium for such latest period, and the premium on a similar vessel sailing before the 1st of August.

7. State all you know, tending to prove that Messrs. Henry Rogers, Sons & Co., of Wolverhampton, England, the shippers of a cargo
4 of iron, per "Maggie Hammond," from Ardrossan, in August, 1866, were fully informed, through their agent in Glasgow, Mr. Jack, or otherwise, of the disaster which had occurred to said vessel, and which compelled her to put back in distress to Cardiff; and that they were likewise informed, through said agent, or otherwise, of the applications which were made by Messrs. Willans & Co., the consignees of said vessel in Cardiff, to relieve said vessel of the obligation to carry said cargo to Montreal; and were likewise similarly informed of the taking of the Baltimore freight by said vessel.

State your knowledge, or means of information, on these matters.

8. State anything further which you may deem of interest to the claimant and respondent, Durkee.

BROWN & BRUNE,
Proctors for Amasa Durkee, Claimant & Respondent.

5 In the Supreme Court of the United States.

SHIP "MAGGIE HAMMOND"
vs.
THOMAS MORELAND & OTHERS.

Cross-interrogatories to be propounded on behalf of the appellees, to witnesses to be examined in Liverpool, England, on behalf of Amasa Durkee.

1. x. If, in reply to the first interrogatory in chief, you say you have any knowledge or information in regard to the navigation & trade between Great Britain & Canada, please state whether or not you ever made a voyage from one of said countries to the other. If yea, in what capacity, on what vessel or vessels, at what time or times, from what port or port did you sail, to what port, & when did you arrive? Mention the times in reference to each of said voyages respectively, if you made more than one.

2. x. If, in reply to the second interrogatory, you mention a time after which, in your opinion, it would be unsafe to dispatch a vessel from Cardiff to Montreal, state in what the unsafety consists; in what part of said voyage is there more danger than in ordinary winter or autumn voyages from England to America; how far & to what point on
6 such a voyage from Cardiff to Montreal is there no more than the ordinary risks of a winter or autumn voyage from Cardiff to northern ports in the United States.

3 x. If, in reply to the fourth interrogatory, you say that no vessel could have been chartered in your port in the year 1866, after the 1st of September, to take a cargo of about six hundred & fifty tons of iron to Montreal, state what attempts you know of having been made to charter a vessel for such a purpose. Give the name of each person who made any such effort; state the name, the owner, & the master of each vessel so attempted to be chartered, & the residence of such owner or master. What was the average number per day of sea-worthy vessel

in your port, unemployed, from the middle of September to the middle of October, 1866?

4. x. State any thing else you may know to the advantage of Messrs. Moreland, Watson & Co., the owners of the cargo shipped on board the "Maggie Hammond" for Montreal, in the year 1866.

WALLIS & THOMAS,
Proctors for Appellees.

7 In the Supreme Court of the United States.

SHIP "MAGGIE HAMMOND"
vs.
THOMAS MORELAND & OTHERS.

The appellees except to the interrogatories hereinafter specified, for the reasons hereinafter mentioned.

To the second interrogatory, because it asks for the opinions of witnesses upon a point on which such opinions are inadmissible.

To the sixth interrogatory, because the rules & regulations of the insurance companies of Great Britain are not pertinent to the issues involved in the cause.

To the seventh interrogatory, because the appellees cannot be affected by the knowledge or acts of the said Messrs. Henry Rogers, Sons & Company, upon the points & at the times in said interrogatory inquired about.

And the appellees not intending to waive, but, on the contrary, intending to rely & insist upon their exceptions aforesaid, file herewith cross-interrogatories, the answers to which as well as those to the interrogatories in chief, they pray may not be considered by the court, except so far as in the opinion of the court said answers may contain proper & admissible testimony, notwithstanding the said exceptions or any others which might be taken thereto.

WALLIS & THOMAS,
Proctors for Appellees.

Fil. Jan'y 15, '69.

8 In the Supreme Court of the United States.

THE SHIP "MAGGIE HAMMOND," &c.,
Amasa Durkee, claimant, appellant,
vs.
THOMAS MORLAND & OTHERS.

To the Honorable William Fell Giles, one of the judges of the circuit court of the United States for the district of Maryland:

It is agreed that a commission to take testimony in the above-entitled cause be issued to William G. Bateson, esq., nominated on the part of appellant, and Palgrave Simpson, esq., nominated on the part of appellees, to take the testimony of witnesses to be examined in Liverpool, England, on interrogatories and cross-interrogatories herewith filed.

The appellees intending hereby only to facilitate the issuing of
9 said commission, if, in the opinion of the Supreme Court the same shall be considered proper; and reserving their right to object to the testimony taken thereunder upon the ground that the appellant was not entitled to have said commission issued.

BROWN & BRUNE,
For Appellant.
WALLIS & THOMAS,
Att's for Appellees.

10 In the Supreme Court of the United States.

THE SHIP "MAGGIE HAMMOND," &c.,
Amasa Durkee, claimant appellant,
vs.
THOMAS MORLAND & OTHERS.

It is, this twenty-third day of January, A. D. 1869, by the circuit court of the United States for the district of Maryland, and by direction of the Honorable William Fell Giles, one of the judges thereof, ordered that a commission be issued from said circuit court to William G. Bateson, esq., nominated on the part of appellant, and Palgrave Simpson, esq., nominated on the part of appellees, to take testimony in the above-entitled cause in Liverpool, England, to be used in the Supreme Court of the United States, according to the agreement of counsel filed in said cause.

WILLIAM F. GILES.

11 THE UNITED STATES OF AMERICA,
District of Maryland, to wit:

To William G. Bateson & Palgrave Simpson, esqrs., of Liverpool, England, greeting:

[SEAL.] Be it known that you are appointed commissioners to examine evidences in a cause now depending in the Supreme Court of the United States between the owners and claimants of the ship Maggie Hammond, appellants, and Thomas Moreland & others, appellees.

Therefore, you are requested, having first taken the oath hereunto annexed, and also administered the annexed oath to the person whom you shall appoint as clerk, to attend the execution of this commission; that, at such time and place as to you shall seem convenient, you cause to come before you all such evidences as shall be named or produced to you by either the appellants or appellees, and that you examine them upon their corporal oath, to be by you administered upon the Holy Evangely of Almighty God, touching their knowledge or remem-

12 brance of anything that may relate to the cause aforesaid; and having reduced the depositions of the witnesses so taken by you into writing, you send the same, with this commission, closed, under your hand and seal, to the said Supreme Court of the United States, with all convenient speed.

Witness the Honorable S. P. Chase, Chief Justice of our Supreme Court, the first Monday in December, in the year of our Lord one thousand eight hundred and sixty-eight.

B. & B.

Issued January 25, 1869.

JAS. W. CHEW,
Clerk Circuit Court U. States for Maryland District.

13 *(Commissioner's oath.)*

You shall, according to the best of your skill and knowledge, truly, faithfully, and without partiality to any or either of the parties, take the examination and depositions of all and every witness and witnesses produced and examined by virtue of the commission hereunto annexed. So help you God.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

(Clerk's oath.)

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, and transcribe the deposition, of all and every the witness & witnesses produced before and examined by the commissioners named in the commission hereunto annexed, as far forth as you are directed and employed by said commissioners to take, write down, and transcribe the said depositions or any of them. So help you God.

14 The execution of this commission appears in the schedules hereto annexed, and accompanying exhibits.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

(Indorsed:) Ship Maggie Hammond vs. Thomas Moreland & others. Commission.

15 Depositions of witnesses produced, sworn, and examined the twelfth day of July, one thousand eight hundred and sixty-nine, in Liverpool, under and by virtue of a commission issued out of the Supreme Court of the United States, in a certain cause therein depending and at issue between the owners and claimants of the ship "Maggie Hammond," appellants, and Thomas Moreland and others, appellees, as follows:

John William Ford, of No. 19 Change Alley, city of London, merchant and ship-owner, a witness produced, sworn, and examined on behalf of the appellants, deposeth and saith as follows:

1. To the first interrogatory he saith:

I have had the most intimate knowledge for the last thirty years of the trade and navigation between Great Britain and Canada, and more particularly in regard to the dispatch and loading of ships in British for Canadian ports.

2. To the second interrogatory he saith:

W. G. B. J. W. F. P. S. A vessel leaving Cardiff for Montreal cannot safely sail later than the twentieth day of September.

3. To the third interrogotory he saith:

The usual period in the spring for the first vessel to leave the port of London (which I believe is the port from which the earliest vessel sail), for Montreal, is the twenty-fifth day of March.

J. W. FORD.

WILLIAM S. BATESON.
PALGRAVE SIMPSON.

16 4. To the fourth interrogatory he saith:

The latest sailing vessel which left London for Montreal in 1866, left on the eighteenth day of September. No sailing vessel could have been chartered in London in that year after the first of September, to take a cargo of about 650 tons of iron to Montreal.

5. To the fifth interrogatory he saith:

I annex to these my answers lists, marked No. 1 and No. 2, of the earliest and latest clearances of sailing ships

and steamers from London to Montreal, for years 1860 to 1867.

6. To the sixth interrogatory he saith:

I annex to these my answers the rules and regulations of nine of the principal insurance companies of Great Britain, having reference to the risks on vessels sailing from British for Canadian ports, before any fixed period in the spring, and after any fixed period in the autumn. According to my experience, the twentieth day of September is the latest period of sailing for Montreal, upon which sailing vessels can be insured by the insurance companies of Great Britain. The difference of premium for such latest period, and the premium on a similar vessel sailing before the first of August, would vary according to many circumstances which would influence an underwriter, but I should say that double the usual premium would be charged. A vessel sailing after the twentieth of September could only be insured in a speculative office, and at a speculative premium—probably fifty per cent.

J. W. FORD.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

17 7. To the seventh interrogatory he saith:

I know not.

8. To the eighth interrogatory he saith:

I know not.

1. To the first cross-interrogatory he saith:

I have never made a voyage between Great Britain and the St. Lawrence.

2. To the second cross-interrogatory he saith:

The unsafety consists in the danger of entering the Gulf of St. Lawrence so late in the season. The dangers in the gulf are greater than near the northern ports of the United States, owing to the frequency of gales of wind, fogs, snow-storms, and ice in the gulf and river St. Lawrence.

J. W. F.

3. To the third cross-interrogatory he saith:

I do not know of any attempt having been made to charter a vessel at the time named. No application was made to me; if any had been made it would have been useless. I cannot answer the latter part of this interrogatory.

4. To the fourth cross-interrogatory he saith:

I cannot say.

J. W. FORD.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

18 James Goodwin, of Ardrossan, Ayrshire, Scotland, ship-broker and ship-chandler, a witness produced, sworn, and examined on the part of the appellants, deposeth and saith as follows:

1. To the first interrogatory he saith:

I am intimately acquainted with the navigation and trade between Great Britain and Canada, and particularly in regard to the dispatch and loading of ships.

2. To the second interrogatory he saith:

The twentieth of September is the latest period of the year that I would consider it safe to dispatch a vessel from Cardiff for Montreal.

3. To the third interrogatory he saith:

From the first to the tenth of April is the usual period in the spring for the first vessels to leave the port of Ardrossan for Montreal.

4. To the fourth interrogatory he saith:

I cannot say on what day the latest vessel sailed from Ardrossan for Montreal in the year 1866, but it was not later than the tenth of September. No vessel could have been chartered for Montreal, in Ardrossan, in 1866, after the first of September.

5. To the fifth interrogatory he saith:

I have not prepared the list referred to.

JAMES GOODWIN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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6. To the sixth interrogatory he saith:

The insurance companies have regulations having reference to the risks on vessels sailing from British for Canadian ports before the first of April and after the middle of August. In my experience, it is very difficult to insure vessels which sail from Great Britain before the first of April or after the middle of August. In my experience, it would be almost impossible to insure a vessel sailing after twentieth of September.

7. To the seventh interrogatory he saith:

I know not.

8. To the eighth interrogatory he saith:

I should like to add that in my opinion the master of the "Maggie Hammond" acted prudently in not reshipping his cargo if he had to discharge it in Cardiff after the twentieth of September.

1. To the first cross-interrogatory he saith:

I have made nine voyages to Canada, in the capacity of master of the barque "Harvest Home," from 1857 to 1862. I never sailed on such voyages in the spring earlier than on the eighth of April, nor in the autumn later than the fifteenth of August; all from Ardrossan to Quebec. I cannot give the dates of arrival out. The average of my voyages would be about fifty days. The latest date at which I ever

JAMES GOODWIN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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reached Quebec was the fourteenth of November.

2. To the second cross-interrogatory he saith:

My reason for stating that it is not safe to dispatch a

vessel from Cardiff to Montreal after the twentieth of September is, that if she be loaded she would most probably, at that season of the year, make a long passage across, and on arrival at the gulf would meet heavy W. N. W. (adverse) gales with snow and ice forming, so that it would be impossible for the vessel to reach Montreal before the next spring. The great danger is in the gulf and river St. Lawrence. I have experienced the dangers myself in the voyage to which I have alluded, when I arrived out on the fourteenth of November, when we had fearful weather in the gulf, and on arrival at Quebec my vessel and her rigging were covered with ice.

3. To the third cross-interrogatory he saith:

I am not aware that any attempt was made in Ardrossan to charter a vessel at the time and for the purpose named in the interrogatory. I do not know that there were any seaworthy vessels in my port unemployed, from the middle of September to the middle of October, 1866.

4. To the fourth cross-interrogatory he saith:

I know not.

JAMES GOODWIN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

21 William Coward, of Cardiff, master mariner, a witness produced, sworn and examined on the part of the appellants, deposeth and saith as follows:

1. To the first interrogatory he saith:

I have had thirty-five years' experience of the trade and navigation between this country and Canada, and more especially in regard to the loading and dispatch of ships between the ports of Great Britain and the ports of Canada.

2. To the second interrogatory he saith:

I consider that the middle of September is the latest period of the year at which it would be safe to dispatch a vessel, moderately loaded, from the port of Cardiff to Montreal.

3. To the third interrogatory he saith:

The usual period in the spring for vessels to leave Cardiff for Quebec is between the first and tenth of April. I cannot answer for Montreal.

4. To the fourth interrogatory he saith:

In the year 1866 I left Cardiff for Quebec in my vessel on the second of September. I believe that I was the last vessel for the St. Lawrence in that year. I cannot state whether any vessels could have been chartered in Cardiff in the year 1866, after the first of September, as I left on the second of that month.

WM. COWARD.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

22 5. To the fifth interrogatory he saith:

I have not prepared a list of the vessels asked for.

The "Eleanor" and the "China" are regular traders. About four years ago they sailed about the twenty-fifth of March, and the "Jane," of Liverpool, also sailed on the twenty-fifth day of March. These are the earliest sailings I remember. I sailed in my ship, the "Empire," after them, about the tenth of April. The first three vessels encountered the ice and met with damage, but my vessel escaped. The latest sailing of a Cardiff ship that I remember was that of my ship, the "Empire," to which I have before alluded.

6. To the sixth interrogatory he saith:

There are rules and regulations of insurance companies of Great Britain, in reference to the risks on vessels sailing from British for Canadian ports before a fixed period in the spring and after a fixed period in the autumn. The effect of them is, that the company in which my company insure will not accept risks on vessels sailing from Cardiff to the St. Lawrence before the first of April or after the first of September. In the case I have mentioned, when I sailed on the second of September the vessel was not insured on the voyage. There is no regulated premium for vessels sailing after the first of September; it is entirely a matter of bargain, and some offices will not take the risks at any price.

7. To the seventh interrogatory he saith:

I know not.

WM. COWARD.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

23 8. To the eighth interrogatory he saith:

I know not.

1. To the first cross-interrogatory he saith:

I have made over thirty voyages from Great Britain to Canada. I have been twenty-three years as master in the following vessels: "Coronet," "Alice Wilson," "Charlotte Harrison," and "Empire." The average date of arrival out at Quebec was about the middle of October.

2. To the second cross-interrogatory he saith:

I have stated that it would be unsafe to dispatch a vessel (I mean a loaded vessel) from Cardiff to Montreal after the middle of September. The unsafety consists in the boisterous state of the weather in the gulf and river St. Lawrence, and continued adverse gales, and the ice in the river. The weather is much worse in the gulf than off the northern ports of the United States.

3. To the third cross-interrogatory he saith:

I left Cardiff on the second of September, in the year 1866, and I cannot, therefore, answer this interrogatory.

4. To the fourth cross-interrogatory he saith:

I know not.

WM. COWARD.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

24 William Yeo Edwards, of Cardiff, ship-owner and broker, being

produced, sworn, and examined, on the part of the appellants, deposeth and saith as follows:

1. To the first interrogatory he saith:

I have perfect knowledge in regard to the dispatch and loading of ships between Great Britain and Canada.

2. To the second interrogatory he saith:

I think the tenth of September is the latest period that would be safe to dispatch a vessel from Cardiff to Montreal.

3. To the third interrogatory he saith:

The usual period in the spring for vessels to leave Cardiff for the St. Lawrence is from the twenty-fifth of March to the first of April.

4. To the fourth interrogatory he saith:

I am not aware that any vessel left Cardiff for the St. Lawrence, in the year 1866, after the first September. No vessel could have been chartered in Cardiff in the year 1866, after the first of September, to take a cargo of about 650 tons of iron to Montreal.

5. To the fifth interrogatory he saith:

W. G. B. P. S. I have not prepared any such lists as are asked for in this interrogatory.

6. To the sixth interrogatory he saith:

There are rules and regulations of the insurance

WILLIAM YEO EDWARDS.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

25 companies of Great Britain, having reference to the risks on vessels sailing from British for Canadian ports before fixed periods in the spring and after fixed periods in the autumn. My experience as an agent for insurance clubs enables me to know this. The effect of the rules is that vessels are excluded from the benefit of their insurances if sailing to the Gulf of St. Lawrence before the first of April or after the tenth of September.

7. To the seventh interrogatory he saith:

I know not.

8. To the eighth interrogatory he saith:

I wish to state that, at the end of September or early in October, I was applied to by the agents of the "Maggie Hammond," to know if I could procure a vessel to take on the cargo of the "Maggie Hammond," and I replied (as the fact was) that I could not obtain a ship until the spring of the following year.

1. To the first cross-interrogatory he saith:

I never made a voyage to the St. Lawrence, but I was for forty years the master of a vessel sailing chiefly round the Horn.

2. To the second cross-interrogatory he saith:

I have before stated that I have never been to the St. Lawrence, but, from my experience and knowledge as a seaman, I am aware that in those northern latitudes the

unsafety of the gulf consists in the strong westerly gales in October, the snow-storms, and

WILLIAM YEO EDWARDS.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

26 the formation of ice in the river.

3. To the third cross-interrogatory he saith:

I have stated in my answer to the eighth interrogatory that I myself was applied to by Messrs. Willans & Co., the agents of the "Maggie Hammond," and they also applied to Messrs. Carroll & Co., who are ship-brokers in Cardiff, and to Mr. Stowe, who is also a ship-broker there, but none of us could do anything for them. I cannot answer the concluding paragraph of this interrogatory.

4. To the fourth cross-interrogatory he saith:

I know not.

WILLIAM YEO EDWARDS.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

Adjourned to the thirteen day of July, 1869.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

Resumed the examination of witnesses on the thirteenth day of July, 1869, under and by virtue of the commission aforesaid.

BRYCE ALLAN.

27 Bryce Allan, of Liverpool, ship-owner, being produced, sworn, and examined on the part of the appellants, deposeth and saith, as follows:

1. To the first interrogatory he saith:

I have considerable knowledge and information in regard to the navigation and trade between Great Britain and Canada; more particularly in regard to the dispatch and loading of ships in British for Canadian ports.

2. To the second interrogatory he saith:

I consider the fifteenth of September the latest period of the year that it would be safe to dispatch a loaded sailing vessel from Cardiff to Montreal, Canada.

3. To the third interrogatory he saith:

About the twenty-fifth of March is the usual period in the spring for the first vessels to leave Liverpool for Montreal.

4. To the fourth interrogatory he saith:

I believe the seventeenth day of September was the latest period in the year 1866 when any sailing vessel left Liverpool for Montreal. I do not think any vessel could have been chartered in Cardiff or Liverpool in the year 1866, after the first of September, to take a cargo of 650 tons of iron to Montreal.

5. To the fifth interrogatory he saith:

I am not prepared with any such list as is referred to by this interrogatory.

6. To the sixth interrogatory he saith:
I am not aware what particular rules and

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WILLIAM G. BATESON.
PALGRAVE SIMPSON.

28 regulations are adopted by the insurance companies of Great Britain with reference to the risks on vessels sailing from British for Canadian ports, either early in the spring or late in the autumn. But no loaded sailing vessel would be accepted for a risk before the twenty-fourth of March, or after the fifteenth of September, unless at a considerable increase of premium.

7. To the seventh interrogatory he saith:
I know not.

8. To the eighth interrogatory he saith:
I know not.

1. To the first cross-interrogatory he saith:
From 1828 to 1847, with the exception of 1833, I made two voyages from the Clyde to Montreal and back; in the year 1833 I made only one such voyage. From 1828 to 1830 I was on board the brig "Favourite," in the capacity of a boy. In the year 1831 I was on board the ship "Canada," in the capacity of second mate. From 1831 to 1835 I was chief mate on board the same ship "Canada." In 1835 I became the master of the "Favourite," and subsequently became the master of the "Canada," "Caledonia," and "Albion." The voyages which I made as a boy were made between Greenock and Montreal; all the subsequent voyages were between Glasgow and Montreal. At the end of 1847 I ceased to go to sea; but in 1848 I came to Liverpool to superintend the management of ships sailing between Liverpool and Montreal. In 1855 I became the manager and part-owner of the steamers constituting the line now known as the "Allan Line," which steamers are in addition to the sailing vessels. The usual time of arrival at Montreal in the spring was from the first to the tenth of May. But on one occasion I arrived at Quebec as early as the eighteenth of April, and was detained

BRYCE ALLAN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

29 there by ice about a week. In 1836 the ice in the river St. Lawrence, close to Quebec, was so strong on the eighth of May, that foot-passengers crossed the ice between Quebec and the opposite shore. To the best of my recollection, I never arrived at Montreal later in the autumn than the fifteenth of October. I never sailed from Great Britain earlier than the twenty-third of March in the spring, or later than the second of September in the autumn.

2. To the second cross-interrogatory he saith:
The unsafety, to which I refer in my answer to the second interrogatory in chief, consists in bad weather, short days, long, intricate, inland navigation, fogs, and

snow-storms. The ice forms rapidly, and, by fi
rudder-case, renders the ship unmanageable on
ward voyage, unless the ship waits until the s
which, of course, ship-owners are very averse. It is the
inland navigation from the Gulf of St. Lawrence to the interior (upwards of 600 miles) which renders a voyage up to Montreal more dangerous than a voyage to the northern ports of the United States on the seaboard.

3. To the third cross-interrogatory he saith:

I am not aware of any attempts having been made to charter a vessel for such a purpose as mentioned in this cross-interrogatory. I cannot give any information as to the number of vessels in my port (Liverpool) unemployed, from the middle of September to the middle of October, 1866.

4. To the fourth cross-interrogatory he saith:

I know not.

BRYCE ALLAN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

30 John Star DeWolf, of Liverpool, ship-owner, a witness produced, sworn and examined on behalf of the appellants, deposeth and saith, as follows:

1. To the first interrogatory he saith:

I have been upwards of 25 years engaged in the trade between ports in Great Britain and Canada, and in the dispatch and loading of ships from British to Canadian ports.

2. To the second interrogatory he saith:

W. G. B. P. S. I consider that from the tenth to the fifteenth of September, or possibly as late as the twentieth of September would be the latest period of the year on which it would be safe to dispatch a vessel from Cardiff for Montreal, Canada.

3. To the third interrogatory he saith:

The first of April is the usual period in the spring for the first vessels to leave the port of Liverpool for Montreal, but some few vessels do leave as early as the twenty-fourth of March.

4. To the fourth interrogatory he saith:

The eighteenth of September was the latest day upon which a sailing vessel left Liverpool, in the year 1866, for Montreal. A vessel could have been chartered in Liverpool after the first of September to take a cargo of about 650 tons of iron for Montreal, provided the day of sailing had not been later than from the tenth to the fifteenth of September.

5. To the fifth interrogatory he saith:

I cannot produce any such lists as those referred to in this interrogatory.

JOHN S. DEWOLF.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

6. To the sixth interrogatory he saith:
I am not aware what particular rules and

BRYCE ALLAN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

28 regulations are adopted by the insurance companies of Great Britain with reference to the risks on vessels sailing from British for Canadian ports, either early in the spring or late in the autumn. But no loaded sailing vessel would be accepted for a risk before the twenty-fourth of March, or after the fifteenth of September, unless at a considerable increase of premium.

7. To the seventh interrogatory he saith:
I know not.

8. To the eighth interrogatory he saith:
I know not.

1. To the first cross-interrogatory he saith:
From 1828 to 1847, with the exception of 1833, I made two voyages from the Clyde to Montreal and back; in the year 1833 I made only one such voyage. From 1828 to 1830 I was on board the brig "Favourite," in the capacity of a boy. In the year 1831 I was on board the ship "Canada," in the capacity of second mate. From 1831 to 1835 I was chief mate on board the same ship "Canada." In 1835 I became the master of the "Favourite," and subsequently became the master of the "Canada," "Caledonia," and "Albion." The voyages which I made as a boy were made between Greenock and Montreal; all the subsequent voyages were between Glasgow and Montreal. At the end of 1847 I ceased to go to sea; but in 1848 I came to Liverpool to superintend the management of ships sailing between Liverpool and Montreal. In 1855 I became the manager and part-owner of the steamers constituting the line now known as the "Allan Line," which steamers are in addition to the sailing vessels. The usual time of arrival at Montreal in the spring was from the first to the tenth of May. But on one occasion I arrived at Quebec as early as the eighteenth of April, and was detained

BRYCE ALLAN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

29 there by ice about a week. In 1836 the ice in the river St. Lawrence, close to Quebec, was so strong on the eighth of May, that foot-passengers crossed the ice between Quebec and the opposite shore. To the best of my recollection, I never arrived at Montreal later in the autumn than the fifteenth of October. I never sailed from Great Britain earlier than the twenty-third of March in the spring, or later than the second of September in the autumn.

2. To the second cross-interrogatory he saith:
The unsafety, to which I refer in my answer to the second interrogatory in chief, consists in bad weather, short days, long, intricate, inland navigation, fogs, and

snow-storms. The ice forms rapidly, and, by fixing the rudder-case, renders the ship unmanageable on a homeward voyage, unless the ship waits until the spring, to which, of course, ship-owners are very averse. It is the inland navigation from the Gulf of St. Lawrence to the interior (upwards of 600 miles) which renders a voyage up to Montreal more dangerous than a voyage to the northern ports of the United States on the seaboard.

3. To the third cross-interrogatory he saith:

I am not aware of any attempts having been made to charter a vessel for such a purpose as mentioned in this cross-interrogatory. I cannot give any information as to the number of vessels in my port (Liverpool) unemployed, from the middle of September to the middle of October, 1866.

4. To the fourth cross-interrogatory he saith:

I know not.

BRYCE ALLAN.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

30 John Star DeWolf, of Liverpool, ship-owner, a witness produced, sworn and examined on behalf of the appellants, deposeth and saith, as follows:

1. To the first interrogatory he saith:

I have been upwards of 25 years engaged in the trade between ports in Great Britain and Canada, and in the dispatch and loading of ships from British to Canadian ports.

2. To the second interrogatory he saith:

W. G. B. P. S. I consider that from the tenth to the fifteenth of September, or possibly as late as the twentieth of September would be the latest period of the year on which it would be safe to dispatch a vessel from Cardiff for Montreal, Canada.

3. To the third interrogatory he saith:

The first of April is the usual period in the spring for the first vessels to leave the port of Liverpool for Montreal, but some few vessels do leave as early as the twenty-fourth of March.

4. To the fourth interrogatory he saith:

The eighteenth of September was the latest day upon which a sailing vessel left Liverpool, in the year 1866, for Montreal. A vessel could have been chartered in Liverpool after the first of September to take a cargo of about 650 tons of iron for Montreal, provided the day of sailing had not been later than from the tenth to the fifteenth of September.

5. To the fifth interrogatory he saith:

I cannot produce any such lists as those referred to in this interrogatory.

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6. To the sixth interrogatory he saith:

There are rules and regulations of the insurance companies of Great Britain, having reference to the risks on vessels sailing from British for Canadian ports before a fixed period in the spring and after a fixed period in the autumn. I cannot speak as to the exact rules; they are not uniform, but the general effect of them is that vessels cannot sail earlier than the first of April, nor later than the first of September, unless a considerably increased premium of insurance be paid.

7. To the seventh interrogatory he saith:

I know not.

8. To the eighth interrogatory he saith:

I know not.

1. To the first cross-interrogatory he saith:

I am a native of Nova Scotia, and have crossed the Atlantic seven times as a passenger. I first crossed from St. Johns, New Brunswick, in the year 1836, in the ship "Calcutta," and came to Liverpool, where we arrived on the fifth of February, 1837. All the other passages were made in steamships between New York and Halifax and Great Britain. I have been up from Quebec to Montreal in steamers in the summer season.

2. To the second cross-interrogatory he saith:

The danger of dispatching a vessel from Cardiff

JOHN S. DEWOLF.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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to Montreal after the fifteenth of September, consists in the frequent adverse gales of wind which she will meet with in the Gulf of St. Lawrence, and in the snow-storms and the ice in the St. Lawrence; foggy weather and long nights are other dangers. The navigation to the northern ports in the States is always open. It is much more dangerous to go up the Saint Lawrence late in the year: there is a long inland navigation up the river which is frozen up altogether in the winter.

3. To the third cross-interrogatory he saith:

I have said that a vessel could have been chartered in Liverpool, provided the day of sailing had been guaranteed not later than from the tenth to the fifteenth of September. It is quite impossible for me to say what number of sea-going vessels were in the port of Liverpool, unemployed, from the middle of September to the middle of October, 1866.

4. To the fourth cross-interrogatory he saith:

I know not.

JOHN S. DEWOLF.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

Henry North, underwriter to the Liverpool Marine Insurance Company, a witness produced, sworn, and examined on the first part of the appellants, doth depose and say as follows:

1. To the first interrogatory he saith:
I was ten years in the office of Messrs. Rankin,

HENRY NORTH.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

33 Gilmore & Co., of Liverpool, who are largely engaged in the trade between Great Britain and Canada; and I have had considerable experience in the dispatch and loading of ships in British for Canadian ports.

2. To the second interrogatory he saith:
I think that from the first to the tenth of September is the latest period of the year at which a vessel can be safely dispatched from Cardiff for Montreal, Canada.

3. To the third interrogatory he saith:
The first vessels for Montreal usually leave Liverpool from the twentieth of March to the tenth of April.

4. To the fourth interrogatory he saith:
The vessel which left Liverpool the latest for Montreal in the year 1866 left on the eighteenth of September. In my opinion no vessel could have been chartered in Liverpool, in 1866, after the first of September, to take a cargo of about 650 tons of iron to Montreal.

5. To the fifth interrogatory he saith:
I have not prepared any such lists as those enquired after.

6. To the sixth interrogatory he saith:
Insurance companies of Great Britain have rules and regulations having reference to the risks

HENRY NORTH.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

34 on vessels sailing from British for Canadian ports before a fixed period in the spring and after a fixed period in the autumn. These rules apply to vessels insured under time policies, and prohibits vessels sailing from this country in the spring before the thirty-first of March, and in the autumn after the first of August. In policies other than time policies the dates of sailing are matters of arrangement involving increase of premium if the risk be accepted.

7. To the seventh interrogatory he saith:
I know not.

8. To the eighth interrogatory he saith:
I know not.

1. To the first cross-interrogatory he saith:
I have been once only up the St. Lawrence as a passenger—in the year in 1857. Having sailed early in May from Liverpool, in a sailing ship called the "Allan," I arrived early in June at Quebec.

2. To the second cross interrogatory he saith:
The unsafety in dispatching a vessel from Cardiff to Montreal late in the autumn consists in the badness of the weather in the gulf and river St. Lawrence, the ice, and the removal of the buoys and lights in the river. There is much greater risk in going to the St. Lawrence

than on a voyage to the northern ports of the United States.

3. To the third cross-interrogatory he saith:

I do not know of any attempts having been

HENRY NORTH.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

35 made to charter a vessel in the port of Liverpool after the first of September, in the year 1866, to take a cargo for Montreal. I cannot say how many unemployed vessels were in Liverpool at the dates mentioned.

4. To the fourth cross-interrogatory he saith:

I know not.

HENRY NORTH.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

Adjourned sine die.

WILLIAM G. BATESON.

Examination of witnesses resumed sixth August, 1869.

Arthur William Singleton, of Glasgow, merchant and ship-owner, being produced, sworn, and examined on the part of the appellants, deposeth and saith as follows:

1. To the first interrogatory he saith:

I have been intimately connected with the trade between Great Britain and Canada for the last fifteen years, in the dispatch and loading of ships and the shipment of goods from British to Canadian ports.

2. To the second interrogatory he saith:

I think that a vessel sailing from

A. W. SINGLETON.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

36 Cardiff for Montreal should certainly not sail later than the tenth of September.

3. To the third interrogatory he saith:

W. G. B. P. S. The usual period in the spring for the first vessels to leave the Clyde is between the 26th March and the first of April.

4. To the fourth interrogatory he saith:

The last ship which cleared from the Clyde in the year 1866, for Montreal, was the "Gleniffer," which sailed on the twelfth of September. I think that a vessel might have been chartered in Glasgow to leave not later than the tenth of September, but the charterers would have had to pay a very high rate of freight, to compensate the ship for extra risk and increased rate of insurance.

5. To the fifth interrogatory he saith:

I have no list of the earliest clearances of ships for Montreal from Glasgow in the springs of the years 1860 to 1867, but I annex a list of the latest clearances in the autumn from 1858 to 1867 inclusive, from Glasgow to Quebec and Montreal.

6. To the sixth interrogatory he saith:

Most of the first-class insurance companies prohibit, in their policies of insurance, vessels from sailing for Canada before the first of April or after the tenth of September. My experience is that the first-class offices will refuse to insure after the dates named, on any terms, and insurances can only be effected with second or third-rate offices or underwriters at very much increased rates of premium.

A. W. SINGLETON.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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7. To the seventh interrogatory he saith:

My firm of "Singleton, Dunn & Co.," acted for the owner of the "Maggie Hammond," in engaging the cargo from Mr. Jack, who represented Messrs. Henry Rodgers, Sons & Co., in the shipment of their portion of the cargo. Upon receipt of a telegram from the captain of the "Maggie Hammond" informing me of his having put back, I informed Mr. Jack, who, I believe, informed Messrs. Rodgers & Co. I afterwards saw in Mr. Jack's possession letters from them to him relative to the disposal of the cargo. Willans & Co. wrote to my firm, and, in consequence of such letter, I saw Mr. Jack, with the object of getting him and Messrs. Rodgers & Co. to relieve the ship of her cargo in Cardiff. I do not know that Mr. Jack, or Messrs. Rodgers & Co., were informed of the taking of a freight to Baltimore by the said vessel.

8. To the eighth interrogatory he saith:

I wish to state, that when I heard that the cargo had not gone with the first of the spring fleet in 1867, I called on Mr. Jack and asked him what claim he intended to make, and he told me that he had instructed his agent in Montreal as to his portion of the cargo, to claim the difference in the market value between the date of the first arrivals and the date of the arrival of the cargo, and I know, from my experience, that similar cases have been settled on similar terms.

1. To the first cross-interrogatory he saith:

I have made one voyage by the steamer "Arabia," as a passenger, in April, 1861, to Halifax, N. S., from Liverpool.

A. W. SINGLETON.

WILLIAM G. BATESON.
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2. To the second cross-interrogatory he saith:

I think that a nautical man would better answer this question. I suppose that the chief danger consists in the ice in the St. Lawrance.

W. G. B.
P. S.

3. To the third cross-interrogatory he saith:

I have said that it would have been possible to have chartered a vessel, provided that she did not sail later than the tenth of September, 1866. I do not remember that any attempts were made to charter a vessel. It is

impossible to answer what was the average number per day of seaworthy vessels unemployed in the Clyde, from the middle of September to the middle of October, 1866. I am not aware of any vessels adapted for the Montreal trade being unemployed at that time.

4. To the fourth cross-interrogatory he said:

I know not.

A. W. SINGLETON.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

Adjourned sine die.

W. G. B.
P. S.

Examination of witnesses resumed Tuesday, twenty-fourth day of August, 1869.

ALEXANDER JACK.

39

Alexander Jack, of the city of Glasgow, iron-merchant, a witness produced and sworn and examined on the part of the appellants, doth depose and say as follows:

1. To the first interrogatory he saith:

I have had considerable experience for the last ten or twelve years in the trade between Great Britain and Canada, more particularly in the shipment of iron from the Clyde. Sometimes I charter entire ships, sometimes I ship iron by general vessels in British for Canadian ports.

2. To the second interrogatory he saith:

I should not consider it safe to despatch a vessel from Cardiff for Montreal later than the twenty-first of September, unless it is intended that the ship should remain ice-bound in the St. Lawrence during the winter, which is not customary.

3. To the third interrogatory he saith:

The usual period in the spring for the first vessels to leave the Clyde for Montreal is the last week of March.

4. To the fourth interrogatory he saith:

The latest sailing vessel which left the port of Glasgow for Montreal, in the year 1866, was the "Annie McKenzie," which sailed on the nineteenth day of September. I cannot answer the last part of this interrogatory.

ALX. JACK.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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5. To the fifth interrogatory he saith:

I annex a list of the earliest and latest clearances of sailing ships from Glasgow to Montreal and Quebec for the years 1860 to 1867, inclusive.

6. To the sixth interrogatory, he saith:

I cannot say that there are any fixed rules or regulations of the insurance companies of Great Britain as to risks on vessels sailing from British for Canadian ports, but in practice, after the middle of August, as the season advances, the rates by sailing ships gradually increase; after about the twenty-first of September the premium

W. G. B.
J. S.

of insurance becomes very heavy; and it is difficult, in fact, to effect insurance at any reasonable price.

7. To the seventh interrogatory he saith:

In September and October, 1866, I had a lengthy correspondence with Messrs. Henry Rogers, Sons & Company, of Wolverhampton, the shippers of the principal part of the cargo per "Maggie Hammond," and they were fully informed of the disaster which had occurred to said vessel, which had compelled her to put back to Cardiff in distress. They were also informed by me of the applications which had been made in Cardiff to relieve said vessel of her obligation to carry on the cargo to Montreal. I did not however know Messrs. Willans & Company in the transaction; but the communications came to me through Mr. Singleton, through whom the vessel had been chartered. Messrs. Rogers and Company were not informed by me of the taking of the Baltimore freight by the Maggie Hammond.

My means of knowledge are the letters which passed.

ALX. JACK.

WILLIAM G. BATESON.

41 NOTE.—The witness was asked to produce the correspondence between himself and Messrs. Rogers, Sons and Company, which he did; but he positively declined to give up any of his principal's letters. At the request of the attorneys for the appellants, we have annexed Exhibit "B," certified copies of original letters and telegrams produced by the witness to us, from Messrs. Henry Rogers' Sons and Company to the witness; and also Exhibit "E," 14 original letters and telegrams produced by witness to us, from Messrs. Willans & Co., of Cardiff, to the witness; also copies, Exhibit "A," of press copies produced by witness to us, of letters from the witness to Messrs. Rogers' Sons and Company; also copies, Exhibit "C," of press copies produced by witness of letters from witness to Messrs. Willans & Co.

8. To the eighth interrogatory he saith:

I can only add that I had a small shipment of fifty tons of iron in the "Maggie Hammond," and I was of opinion that the vessel could not have safely proceeded to Montreal that season, after putting back damaged and having to undergo repairs. As the cargo was not forwarded with the first spring ships in 1867, I claimed and received from the owner the difference in the value of the iron between the time of the arrival of the first spring ships and the date of the arrival of the iron, with two months' interest. The amount of compensation was $61\frac{67}{100}$ dollars.

ALEX. JACK.

WILLIAM G. BATESON.

PALGRAVE SIMPSON.

42 1. To the first cross-interrogatory he saith:

I never made a voyage across the Atlantic.

2. To the second cross-interrogatory he saith:

The unsafety in an early spring or a late autumn voyage consists in the dangers from ice in the St. Lawrence,

which is virtually frozen for four or five months every year. I cannot speak to the point of the voyage where the danger begins.

There is great difference in a voyage to the St. Lawrence, and one to the northern ports of the United States, as the latter ports are not frozen up like those in the St. Lawrence.

3. To the third cross-interrogatory he saith:

I cannot answer this interrogatory. I have no opportunity of knowing how many vessels were in the port of Glasgow, unemployed, at the time named.

4. To the fourth cross-interrogatory he saith:

I know not.

ALEX. JACK.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

43 John Kirkham Evans, [John Kirkham Evans,] of Liverpool, clerk in the bill-of-entry office, custom-house, Liverpool, a witness produced, sworn, and examined on the part of the appellants, doth depose and say as follows:

3. To the third interrogatory he saith:

The usual period in the spring for the first vessel to leave the port of Liverpool for Montreal is between the twenty-fourth of March and the seventh of April.

4. To the fourth interrogatory he saith:

The latest vessel which cleared from the port of Liverpool for Montreal, in the year 1866, cleared on the seventeenth of September. I know nothing as to the chartering of ships.

5. To the fifth interrogatory he saith:

I produce the lists referred to in this interrogatory, marked respectively "A 1" and "A 2."

To the last cross-interrogatory he saith:

I know not.

JNO. K. EVANS.

WILLIAM G. BATESON.
PALGRAVE SIMPSON.

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45 No. 1.

List of first & last ships sailed from London for Montreal in the spring & autumn of the years 1860, 1861, 1862, 1863.

1860.—	Ship	Great Britain, D. Wilson	3rd April.
*	"	John Bull, J. James	5th April.
	"	Great Britain, D. Wilson	30th August.
1861.	"	Great Britain, D. Wilson	1st April.
*	"	John Bull, J. James	1st April.
	"	City of Quebec, H. Auld	1st April.
*	"	Conway, H. Groves	18th Sept'r.
1862. *	"	John Bull, James	25th March.
*	"	City of Quebec, H. Auld	29 March.
	"	Great Britain, D. Wilson	29 March.
	"	Washington Irving, Durrant	10 Sept'r.

1863.	*	"	City of Quebec, Dalrymple	26 March.
		"	Canada, Wilson	27 M'ch.
	*	"	Annie Lawrie, Rowley	12 Sept'r.

*The ships with an asterisk before their name cleared for Quebec & Montreal.

J. W. FORD.

This is the first No. 1 referred to by John William Ford in his answer to the 5th interrogatory.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Comm'rs.

46 No. 2.

List of first & last ships sailed from London for Montreal in the spring & autumn of the years 1864, 1865, 1866, & 1867.

				Cleared.
1864.—Ship			"Able Seaman," James	23rd March.
"	*	"	"City of Hamilton," Dounce	26th March.
"	*	"	"Minniehaha, Henderson	9th Sept'b'r.
1865.		"	"John Bull," J. Harris	31st March.
"	*	"	Chaudiere, Wilson	1st April.
"	*	"	Scotia, Yeoman	11th Sept'r.
"	*	"	St. Lawrence (s|s.), James	18th Oct'r.
1866.	*	"	Eclipse, Duckles	27th March.
"		"	City of Hamilton, Ridland	28th March.
"		"	Chaudiere, Wilson	28th March.
"	*	"	Anne Forster, Thomas	15th Sept'b'r.
"	*	"	Thames (s|s.), Pinkerton	17th Sept'b'r.
"	*	"	St. Lawrence (s|s.), James	17th Oct'b'r.
1867.		"	John Bull, Harriss	23rd March.
"		"	Chaudiere, Wilson	27th March.
"		"	Planet, Davis	12th Sept'b'r.
"	*	"	St. Lawrence (s|s.), James	19th Oct'r.

The ships with an asterisk before the name cleared for Montreal & Quebec.

J. W. FORD.

This is the list No. 2 referred to by John William Ford in his answer to the 5th int'y.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Comm'rs.

47 *Limitation in the time policies of the British Marine Insurance Company, limited.*

Warranted not to sail—

To the Azores.

To any port or place in British America, before the 31st March, or after the 1st August, or from any such port or place after the 1st October.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 31st March, or after the 12th September, or from any such port or place after the 1st October.

To any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before 31st March, or after the 6th July, or from any such port or place after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January; and not to proceed to the river Plate above Buenos Ayres, or to Rio Grande, and not to trade in the China seas.

J. W. FORD.

Limitation in the time policies of the London and Caledonian Marine Insurance Company (limited.)

Warranted not to sail—

To the Azores.

To any port or place in British America, before the 31st March, or after the 1st August, or from any such port or place after the 1st October.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 31st March, or after the 12th September, or from any such port or place after the 1st October.

To any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before 31st March, or after the 6th July, or from any such port or place after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

J. W. FORD.

Limitations in the time policies of the Thames and Mersey Marine Insurance Company.

Warranted not to sail—

To the Azores.

To any port or place in British America, before the 31st March, or after the 1st August, or from any such port or place after the 1st October.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 31st March, or after the 12th September, or from any such port or place after the 1st October.

To any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before 31st March, or after the 6th July, or from any such port or place after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

J. W. FORD.

Limitation in the time policies of the Western Insurance Company, limited.

Warranted not to sail—

To the Azores.

To any port or place in British America, before the 31st March, or after the 1st August, or from any such port or place after the 1st October.

J. W. FORD.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 31st March, or after the 12th September, or from any such port or place after the 1st October.

To any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before the 31st March, or after the 6th July, or from any such port or place after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

Lloyds.

J. W. FORD.

Warranted not to sail from the Baltic, White or Black Seas, or British North America, between the 1st day of October and the 1st day of April, nor from the West Indies, between the 1st day of August and the 12th day of January, or to go to the Azores, nor to sail to the Baltic before the 20th day of March, nor after the 10th day of September.

These are the rules and regulations referred to by John William Ford in his answer to the sixth interrogatory.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Comm'rs.

48 No. *Indemnity.*

Warranted not to sail—

To the Azores.

From any port or place in British America, before the 31st March, or after the 1st October.

J. W. FORD.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 20th March, or after the 10th September, or from any such port or place after the 1st October and 1st April.

From any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before the 31st March, or after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras. Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

I.

Limitations in the time policies of "The Universal Marine" Insurance Company, limited.

Warranted not to sail—

J. W. FORD.

To the Azores.

To any part of British America, after the 7th August.

To any part in the Baltic, beyond Copenhagen, after the 22nd September.

To the Gulph of Bothnia, Finland. or Riga, after the 12th September.

To the White Sea, after the 26th July.

To the river St. Lawrence, before the 31st March, nor after the 25th July.

From any ports of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

J.

Limitations in the time policies of the London and Provincial Marine Insurance Company.

Warranted not to sail—

J. W. FORD.

To the Azores.

To any part of British America, after the 7th August.

To any part in the Baltic, beyond Copenhagen, after the 22nd September.

To the Gulph of Bothnia, Finland, or Riga, after the 12th September.

To the White Sea, after the 26th July.

To the river St. Lawrence, before the 31st March, nor after the 25th July.

From any ports of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

Limitation in the time policies of the Ocean Marine Insurance Company.

Warranted not to sail—

J. W. FORD.

To the Azores.

To any port or place in British America, before the 31st March, or after the 1st August, or from any such port or place after the 1st October.

To any port or place in the Baltic, Gulf of Bothnia, Finland, or to Riga, before 31st March, or after the 12th September, or from any such port or place after the 1st October.

To any port or place in the Black or White Sea, or Sea of Azof, or in any river running into either of those seas, before 31st March, or after the 6th July, or from any such port or place after the 1st October.

From any port or place of the Spanish Main, Bay of Honduras, Jamaica, St. Domingo, or any of the West India islands or colonies, between the 1st August and the 12th January.

49 A. W. SINGLETON.

BILL-OF-ENTRY OFFICE, [British coat of arms,] CUSTOM-HOUSE,
Glasgow, 17th day February, 1868.

This is to certify, that upon an examination of the official documents kept at this port, it appears that the undermentioned were the last sailing vessels which cleared for the St. Lawrence from this port during the years specified:

	Date of clearance.	Vessels' name.
1858.	September 4th	Canada.
1859.	" 1th	Home.
1860.	" 1th	Home.
1861.	" 24th	Oden.
1862.	" 13th	Toronto.
1863.	" 12th	William Gillies.
1864.	" 12th	Shandon.
1865.	" 13th	Victor Hudon.
1866.	" 12th	Gleniffer.
1867.	" 19th	Toscano.

[SEAL.] H. CUTHBERTSON.

This is the list referred to by Arthur William Singleton, in his answer to fifth interrogatory.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

[United States coat of arms.]

CONSULATE OF THE UNITED STATES OF AMERICA, *Glasgow:*

I, W. L. Duff, consul of the United States of America for the port of Glasgow and its dependencies, do certify and make known to whom these presents shall come, that H. Cuthbertson, whose genuine signature is subscribed & genuine seal is affixed, is one of her Majesty's custom-house officers, & that as such his official acts are entitled to full faith & credit.

Given under my hand and official seal in Glasgow, aforesaid, this 1st day of April, in the year of our Lord one thousand eight hundred and sixty-eight, and of the independence of the United States the ninety-second.

[SEAL.] W. L. DUFF,
U. S. Consul.

50 Supreme Court of the United States.

MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

This is the list ——— referred to in the 5th answer in the examination of Alexander Jack taken before us under commission herein.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

51 Years.	First ship sailing to Quebec or Montreal.		Last ship of the season.	
	Date.	Name of vessel.	Date.	Name of vessel.
1860.....	March 28th.....	St. Lawrence.....	1st October.....	Shandon.
	" 28th.....	Shandon.....	.....	
1861.....	March 25th.....	Caledonia.....	September 28th.....	Caledonia.
1862.....	March 20th.....	Iona.....	September 13th.....	Iona.
1863.....	March 21st.....	Ardmillan	September 19th.....	Britannia.
1864.....	March 24th.....	Clydesdall	September 13th	Shandon.
	" 24th.....	Shandon	.....	
1865.....	March 28th.....	Shandon	September 12th.....	S. Morton, M'nt l.
	" 28th.....	Clydesdall	" 13th.....	J. Hudson, Quebec.
1866.....	March 24th.....	Shandon	September 19th.....	Annie McKenzie.
1867.....	March 22nd.....	Anglesea.....	September 20th.....	Joseana.
	" "	Abeona.....	.....	
	" "	Queen of the Clyde....	.....	

ALEX'R JACK.

52 BILL-OF-ENTRY OFFICE, CUSTOMS, *Liverpool:*

186 . *An account shewing the earliest clearances of ships for Montreal in the following years:*

1860.	Pride of Canada,	2nd April.
1861.	Kalos & Queen of the Lakes,	28th March.
1862.	Golden Light,	24th "
1863.	Canada Belle,	24th "
1864.	Pericles,	26th "
1865.	Pericles & Waverly,	7th April.
1866.	Maria Adelaide,	2nd "
1867.	Pomona,	25th March.

Stamp: [Bill-of-Entry Office, Customs, Liverpool.]

53 Supreme Court of the United States.

THE MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

This is the Exhibit "A 1," referred to in the examination of John Kirkham Evans taken before us under commission.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

54 BILL-OF-ENTRY OFFICE, CUSTOMS, *Liverpool:*

186 . *An account shewing the latest ship clearing for Montreal in the following years:*

1860.	W. H. Merritt,	10th September.
1861.	Sam'l Boddington,	25th "
1862.	Harlequin,	22nd "
1863.	Glenlyon,	26th "
1864.	Saranac,	24th "
1865.	Etowah,	9th "
1866.	Michigan,	17th "
1867.	Avon,	16th "

Stamp: [Bill-of-Entry Office, Customs, Liverpool.] W. O. J.

55 Supreme Court of the United States.

THE MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

This is the Exhibit "A 2," referred to in the examination of John Kirkham Evans taken before us under commission herein.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

56 Supreme Court of the United States.

THE MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

The annexed documents are the Exhibit "B" referred to in the examination of Alexander Jack taken under commission before us.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

ALEX'R JACK.

Examined with the original letters and telegrams produced and handed to us by the witness Alexander Jack, and certified by us to be true copies of the same.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

57 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Sept. 20, '66.

A. JACK, Esq're, *Glasgow:*

DEAR SIR: Could you ship 300 tons pig-iron to Montreal, to replace that shipped for the vessel which has put back into Milford Haven—Maggie Hammond. We are afraid there will be no other chance.

Yours, truly,

HENRY ROGERS' SON & CO.,
W. R.

Can you give us the price of Glasgow hard spilter? We have an inquiry for some.

58 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 21 *Sept.*, 1866.

Mr. ALEX'R JACK, *Glasgow:*

DEAR SIR: Thanks for telegram of even date. If you have reason to suppose that the 300 tons pig-iron p. Maggie Hammond will not be sent on this season, & can replace it by the vessel to Quebec @ 15, & insure @ 50, or not over 60s, please supply a duplicate lot.

Dear sirs, yours, truly,

HENRY ROGERS' SON & CO.

Policy pr. "Hane" enclosed.

We have to apologise for omitting to acknowledge receipt of cheques, say £2,000, & £83 11 9, which, with insurance a cts. due to you balances our claim pr. Fleetwing, with thanks.

[£2000 00. £83 11 9. H. R. S. & Co. P. W. S. Receipt.]

59 [Copy telegram.]

Jack, H'y Rogers' Sons & Co., Wolverhampton:

Don't think Maggie Hammond will go now to Halifax. Freight asked sixteen shillings pigs, twenty for bars. Sailing on Monday.

ALEX. JACK.

60 [Copy telegram.]

From Rogers, Wolverhampton, to Alex'r Jack, 112 West Geo. street, Glasgow:

Will Maggie Hammond sail again this season? Lowest rate of freight to Halifax. Reply by wire.

61 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Sept. 29, '66.

A. JACK, Esq., *Glasgow*:

DEAR SIR: If you can sell the pig-iron ex Maggie Hammond, at Cardiff, please do so. If you can get enough to cover any liens, we should prefer doing so to keeping it over the winter. Of course, if you can get a profit, do so. Thanks for information about puddled bar.

Yours, truly,

H. ROGERS' SONS & CO.
J. W. R. L.

62 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Oct'r 4, 1866.

ALEX. JACK, Esq., *Glasgow:*

DEAR SIR: In reply to your letter of 1st, before any decision is to come to for selling the Maggie Hammond cargo of pig-iron, you must have a clear agreement with owners of vessel and insurance-brokers as to their claim, or we shall get into some difficulty.

When you have arranged with them, we will leave the sale in your hands, in full confidence that you will make best sale you can for our interest.

We are, dear sir, yours, truly,

HENRY ROGERS' SONS & CO.

63 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Oct. 31, 1866.

ALEX. JACK, Esq., *Glasgow*:

DEAR SIR: With reference to your telegram, if you see your way clear to dispose of the iron to a profit for our friend, then accept the offer made; if not, do not close without further communication.

Have you made any agreement with the underwriter to return all as portion of insurance?

We are, dear sir, yours, truly,

HENRY ROGERS' SONS & CO.

64 [Copy.]

Memorandum, Nov. 5, 1866.

From Henry Rogers, Sons & Co., Wolverhampton, to Alex. Jack, esq., Glasgow:

We decline to take charge of Maggie Hammond cargo, but will sell it to owners if they will buy at a fair price.

65 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 14 *Nov'r*, 1866.

Mr. ALEX'R JACK, *Glasgow:*

DEAR SIR: We are favored with yours of yest'y; your order for spikes is promised to leave this next Wednesday by rail, & will, therefore, we hope, reach you in good time. By sample post we send a spike with cut points; if this will suit, we might obtain a little earlier delivery & an allowance of 10 % p. ton. If you decide on this, please telegraph in the morning; otherwise they will be sent with forged points, which resemble more closely your rough sketch. Maggie Hammond, if we can get cost of pig-iron, say your inv'ce & interest to date, you or any one else may do what you like with the iron; but as we are simply agents in the matter, must insist either on this, or else that the ship prosecutes her voyage with as little delay as possible; say, so soon as navigation opens.

We are, dear sir, yours, truly,

HENRY ROGERS' SONS & CO.

66 [Copy telegram.]

Jack Henry Rogers' Sons & Co., Wolverhampton:

Maggie Hammond, loaded for Baltimore, sails in two hours; should be arrested; try and take legal action. iet with Cardiff.

ALEX. JACK.

67 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 21 *Nov.*, 1866.

Mr. ALEX. JACK, *Glasgow:*

DEAR SIR: Your telegram is just to hand; say, 4 p. m, & of course we can do nothing to stop a vessel sailing in two hours from Cardiff. We had left the question in your hands, feeling you would be in communication with some one at Cardiff; otherwise we should have instructed some other party there to watch our interests.

Dear sirs, yours, truly,

HENRY ROGERS' SONS & CO.

68 [Copy.]

IRON, METAL & HARDWARE MERCHANTS,
Wolverhampton, 22 *Nov.*, 1866.

Mr. ALEX'R JACK, *Glasgow:*

DEAR SIRS: You will oblige us by advising, by return, names of owners of Maggie Hammond, & address so that we can by Sat'y's mail put the matter in full train; she sailed early this morning.

Yours, truly,

HENRY ROGERS' SONS & CO.

Are not the Bonds interested in this vessel?

69 [Copy.]

32 BUCKLERSBURG,
London, 22 *Nov'r*, 1866.

A. JACK, Esq., *West George st., Glasgow:*

DEAR SIR: Yours, of yesterday, duly to hand, and we hope to hear from our L'pool office to-morrow whether they have succeeded in covering the Surah Harris. The Maggie Hammond sailed for Baltimore before we could take any proceedings; the pig-iron has all been landed, and is now lying in Cardiff.

Please see the parties with whom you made the charter, and ascertain what steps they intend to take to convey the iron to its destination, and advise us by return.

Yours, truly,

H. ROGERS' SONS & CO.
H. LEDGER, JUN'R.

70 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 23 *Nov.*, 1866.

ALEX'R JACK, Esq., *Glasgow:*

DEAR SIR:

"Maggie Hammond:"

Please ascertain from u'writers if, providing vessel will pay us for pig-iron, they will pay average bond & consider voyage closed. A point occurs to us, whether, supposing vessel returns to Cardiff in spring & offers to complete voyage to Canada, whether or no, policy is vitiated by the intervening trip. It is a vexatious affair, but we hope there is now a glimmer of light.

Dear sir, y'rs, truly,

HENRY ROGERS & SONS & CO.

71 [Copy.]

IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, *November* 23, '66.

A. JACK, Esq., *Glasgow:*

DEAR SIR: We have had a visit to-day from the agent of the owners; they offer either to buy the pig-iron or to send it out in the spring in another vessel. He also read us a letter just received from the owner. The names of the agents are Williams & Co., late Sydney Jenkins & Williams, Cardiff. Our prices are absent to-day, so cannot write you more fully till they return to-morrow.

Yours, truly,

HENRY ROGERS' SONS & CO.
W. R. Q.

72 [Copy.]

32 BUCKLERSBURG,
London, 1 *Dec'r*, 1866.

ALEXANDER JACK, Esq're:

DEAR SIR: We have your favor of 30th ult'o, and we now understand force of your remark, re. g. average on the Maggie Hammond. We will take good care not to part with that appertaining to our portion of the cargo; but you will know the shippers of the remainder, and had better put a stop on it by legal notice at once.

Yours, truly,

HY ROGERS' SONS & CO.
FRED'K CUPING.

73 [Copy.]

CARDIFF, 15*th February*, 1867.

Messrs. H'Y ROGERS & SONS, *Wolverhampton:*

DEAR SIRS: Referring to our last respects we have to advise you that we have another letter from the owners of the "Maggie Hammond" this mail, in which he fears she will not be able to get back in time, in consequence of ice; and Baltimore to take cargo away with the first fleet, as we have undertaken to do. But the "George Durkee" is now at Dublin, waiting our instructions; and the present is to ask if you or your underwriters have any objections to the cargo being shipped by her; and if not, we will order her round at once, and let her wait until first of April; but should there be any objections, we will at once find another vessel, as we are anxious the matter should end satisfactorily, and your not being consulted before is only attributable to our ignorance of the proper party to whom to apply, and immediately we ascertained, the writer came on at once.

Your early reply will oblige, very truly, yours,

WILLANS & CO.

74 16 FEB., 1867.

Messrs. WILLANS & Co., *Cardiff:*

DEAR SIRS:

"Maggie Hammond:"

This vessel was insured in Scotland. We write our agent there "to enquire," according to your desire, & ask him (Mr. Jack) to reply direct.

Of course, we accept no responsibility in this matter whatever. We were not consulted, & any steps taken by us have been solely to protect our correspondent, for whom we bought the iron. Has the vessel arrived at Baltimore?

Yours, truly,

HENRY ROGERS' SONS & CO.

75 IRON, METAL, & HARDWARE MERCHANTS.
Wolverhampton, 16 *Feb'y*, 1867.

Mr. ALEX. JACK, *Glasgow:*

DEAR SIR:

"Maggie Hammond."

Vide enclose copy of letter. Please consult u'writers & advise Willans & Co. direct. We half expect capt'n of Maggie H. will have a warm reception at Baltimore, notwithstanding the ice, for consignees intended taking active steps; but this we have nothing to do with, so, of course, you must not refer to. We shall let them fight it out as best they can.

Send us copy of your note to Willans.

Yours, truly,

HENRY ROGERS' SONS & CO.

76 [Cunard Steamer.]

MONTREAL, 4*th Feb'y*, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: You advised us that the Maggie Hammond sailed from Cardiff on 22nd November last. She is, therefore, 74 days out, and as yet we have heard nothing of her, although our friends in Baltimore

were to telegraph at once on her being reported there. Under these circumstances we are inclined to think that she must be lost. As the season for shipping from your side, to arrive on opening of navigation, is drawing near, we presume that some arrangements will have to be made with the underwriters in reference to sending out the iron by some other vessel, and we take the opportunity to inform you of the probable loss, that some steps may be taken to arrange this matter, that we may get our iron as early as practicable in the spring. Or you can dispose of the iron, so that we are covered; tho' we think the underwriters are responsible for amount insured.

We remain, yours, faithfully,

77 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Feb'y 9th, 1867.

ALEX. JACK, Esq., *Glasgow:*

DEAR SIR: We have yours of yesterday, and now send you copy of a letter we rec'd by last mail from Montreal, concerning "Maggie Hammond."

Yours, very truly,

HENRY ROGERS' SONS AND CO.

P. S. Better not, perhaps, show this to u'writers.

78 *Memorandum.*

Rose, Marison & Thomson, 110 Buchanan street, Glasgow, to Alex. Jack, Esq.

GLASGOW, 20*th Feb'y*, 1867.

"Maggie Hammond."

"The company, although not bound to continue the risk, will do so by an approved vessel. They will not take the George Durkee; she is a very inferior vessel, and they think not at all adapted for a cargo of pig-iron. Before, therefore, your friends accept of a vessel, be kind enough to let us have her name, so that the underwriter may approve of her.

"The company instructs us, at the same time, to protest against any expense incurred for warehouse rent, and other incidental expenses attendant upon the storage of the iron at Cardiff, from the time the Maggie Hammond was in a fit condition to receive on board the iron there. Such charges they will not contribute to, and we beg that you will notify your friends accordingly."

DEAR SIR: We beg to draw your attention to the above extract from our L'pool correspondent's letter, received this morning.

We remain, dear sir, yours, faithfully,

ROSE, MURISON & THOMSON.

79 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, April 4, 1867.

ALEX'R JACK, Esq., *Glasgow:*

DEAR SIR: In reply to your letter of 3rd, we could not reply to your former letter until we heard from our agents at Cardiff, to whom we wrote requesting them to find a ship which will take the whole cargo, and we are a'xious to hear from our friends in Canada as to what is done with Maggie Hammond, as we hear she is arrested.

We are, dear sir, yours truly,

H. ROGERS' SONS & CO.

80 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 17 *April*, 1867.

Mr. ALEX. JACK, *Glasgow:*

DEAR SIR: We shall be quite agreeable to the iron ex Maggie Hammand being transferred to "Royal Charlie," provided B.L. are made out exactly as the original ones; but Messrs. Willans, of Cardiff, want to consign the iron to their own agent at Montreal; to this we cannot consent; but, to show our willingness to meet the case, named Messrs. Jas. Hutton & Co's.

If captain of "Royal Charlie" is wise he will endeavor to settle the question; for the Maggie H. was arrested at Baltimore, & bond given by owner; so that latter will have smart damages to pay if he or his agent persist in their refusal to complete contract. We shall be only too glad if you can help a settlement, for it has been a most vexatious affair.

D'r sir, y'rs truly, HENRY ROGERS' SONS & CO.

81 WOLVERHAMPTON, 23 *April*, 1867.

Messrs. WILLANS & Co., *Cardiff:*

D'R SIRS: We are favored with yours of yesterday. You can hardly suppose that we should allow the iron to be shipped unless we obtained B. L., especially, after our experience in matter of "Maggie Hammond." We have no objection to a clause that cargo in B. L. per Royal Charlie is identical with that per "Maggie Hammond." This will quite meet your objection, and, unless you now determine to complete contract, we shall advise consignees to enforce the payment of bond.

Yours, truly, H. ROGERS' SONS & CO.

CARDIFF, *April* 22, '67.

Messrs. H. ROGERS' SONS & Co., *W'hampton:*

DEAR SIRS: Yours of Sat'y is to hand. We have also heard from Mr. Batchelor, and in reply, we beg to say it is impossible for us to
82 give 2 sets of B. L. for the same cargo. We are quite prepared to carry out the agreement, viz., to carry the iron to Montreal (dangers of seas, &c., excepted), and have a ship ready to take it; & if any detention arises, it is only on your part, and the owner cannot be responsible.

We are aware the owner has been put to considerable trouble on the other side, evidently on the original B. L., and if we were to give others, they might get into other hands and cause the owner more inconvenience.

Trusting you will at once remove the stop, we are, dear sirs, yours truly, WILLANS & CO.

83 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, *April* 23*rd*, 1867.

Mr. A. JACK, *Glasgow:*

DEAR SIR: We have to own your favor of yesterday, for which we are much obliged. We now send you copy of letter we have rec'd from Messrs. Willans, and our reply of this date. We are acting under legal advice and do not feel disposed to place our colonial friends in a position that their interest may be sacrificed. We think we are only asking what is reasonable.

We are, dear sir, yours, very truly,
H. ROGERS' SONS & CO.,
p. W. D.

were to telegraph at once on her being reported there. Under these circumstances we are inclined to think that she must be lost. As the season for shipping from your side, to arrive on opening of navigation, is drawing near, we presume that some arrangements will have to be made with the underwriters in reference to sending out the iron by some other vessel, and we take the opportunity to inform you of the probable loss, that some steps may be taken to arrange this matter, that we may get our iron as early as practicable in the spring. Or you can dispose of the iron, so that we are covered; tho' we think the underwriters are responsible for amount insured.

We remain, yours, faithfully,

77 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, Feb'y 9th, 1867.

ALEX. JACK, Esq., *Glasgow:*

DEAR SIR: We have yours of yesterday, and now send you copy of a letter we rec'd by last mail from Montreal, concerning "Maggie Hammond."

Yours, very truly,

HENRY ROGERS' SONS AND CO.

P. S. Better not, perhaps, show this to u'writers.

78 *Memorandum.*

Rose, Marison & Thomson, 110 Buchanan street, Glasgow, to Alex. Jack, Esq.

GLASGOW, 20*th Feb'y*, 1867.

"Maggie Hammond."

"The company, although not bound to continue the risk, will do so by an approved vessel. They will not take the George Durkee; she is a very inferior vessel, and they think not at all adapted for a cargo of pig-iron. Before, therefore, your friends accept of a vessel, be kind enough to let us have her name, so that the underwriter may approve of her.

"The company instructs us, at the same time, to protest against any expense incurred for warehouse rent, and other incidental expenses attendant upon the storage of the iron at Cardiff, from the time the Maggie Hammond was in a fit condition to receive on board the iron there. Such charges they will not contribute to, and we beg that you will notify your friends accordingly."

DEAR SIR: We beg to draw your attention to the above extract from our L'pool correspondent's letter, received this morning.

We remain, dear sir, yours, faithfully,

ROSE, MURISON & THOMSON.

79 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, April 4, 1867.

ALEX'R JACK, Esq., *Glasgow:*

DEAR SIR: In reply to your letter of 3rd, we could not reply to your former letter until we heard from our agents at Cardiff, to whom we wrote requesting them to find a ship which will take the whole cargo, and we are a'xious to hear from our friends in Canada as to what is done with Maggie Hammond, as we hear she is arrested.

We are, dear sir, yours truly,

H. ROGERS' SONS & CO.

80 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 17 *April*, 1867.

Mr. ALEX. JACK, *Glasgow:*

DEAR SIR: We shall be quite agreeable to the iron ex Maggie Hammand being transferred to "Royal Charlie," provided B.L. are made out exactly as the original ones; but Messrs. Willans, of Cardiff, want to consign the iron to their own agent at Montreal; to this we cannot consent; but, to show our willingness to meet the case, named Messrs. Jas. Hutton & Co's.

If captain of "Royal Charlie" is wise he will endeavor to settle the question; for the Maggie H. was arrested at Baltimore, & bond given by owner; so that latter will have smart damages to pay if he or his agent persist in their refusal to complete contract. We shall be only too glad if you can help a settlement, for it has been a most vexatious affair.

D'r sir, y'rs truly, HENRY ROGERS' SONS & CO.

81 WOLVERHAMPTON, 23 *April*, 1867.

Messrs. WILLANS & Co., *Cardiff:*

D'R SIRS: We are favored with yours of yesterday. You can hardly suppose that we should allow the iron to be shipped unless we obtained B. L., especially, after our experience in matter of "Maggie Hammond." We have no objection to a clause that cargo in B. L. per Royal Charlie is identical with that per "Maggie Hammond." This will quite meet your objection, and, unless you now determine to complete contract, we shall advise consignees to enforce the payment of bond.

Yours, truly, H. ROGERS' SONS & CO.

CARDIFF, *April* 22, '67.

Messrs. H. ROGERS' SONS & Co., *W'hampton:*

DEAR SIRS: Yours of Sat'y is to hand. We have also heard from Mr. Batchelor, and in reply, we beg to say it is impossible for us to
82 give 2 sets of B. L. for the same cargo. We are quite prepared to carry out the agreement, viz., to carry the iron to Montreal (dangers of seas, &c., excepted), and have a ship ready to take it; & if any detention arises, it is only on your part, and the owner cannot be responsible.

We are aware the owner has been put to considerable trouble on the other side, evidently on the original B. L., and if we were to give others, they might get into other hands and cause the owner more inconvenience.

Trusting you will at once remove the stop, we are, dear sirs, yours truly, WILLANS & CO.

83 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, April 23rd, 1867.

Mr. A. JACK, *Glasgow:*

DEAR SIR: We have to own your favor of yesterday, for which we are much obliged. We now send you copy of letter we have rec'd from Messrs. Willans, and our reply of this date. We are acting under legal advice and do not feel disposed to place our colonial friends in a position that their interest may be sacrificed. We think we are only asking what is reasonable.

We are, dear sir, yours, very truly,

H. ROGERS' SONS & CO.,
p. W. D.

84 *Memorandum.*

2 MAY, 1867.

From Henry Rogers' Sons & Co., Wolverhampton, to Mr. Alex'r Jack, Glasgow:

Re. "Maggie Hammond:"

We have agreed with Messrs. Willans to ship the pig-iron per "Royal Charlie," & wish you to inform the underwriters; on completion of shipment, policy shall be sent you for clause to be inserted.

85 *Memorandum.*

MAY 6, 1867.

From Henry Rogers' Sons & Co., Wolverhampton, to Alex. Jack, esq., Glasgow:

We have agreed to allow the pig-iron to be shipped per Royal Charlie, on condition that it is consigned to the original owner of the bill of lading per Maggie Hammond.

86 *Memorandum.*

17TH MAY, 1867.

From Henry Rogers' Sons & Co., Wolverhampton, to Mr. Alex'r Jack, Glasgow:

Agreeably with request of your yesterday's favor, we now beg to enclose you the policy of insurance p'r "Maggie Hammond," for adjustment, which be pleased to have put in order & return to us.

87 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, May, 24th, 1867.

ALEX'R JACK, Esq., *Glasgow:*

DEAR SIR: We have to thank you for your note of yesterday with its inclosure, and will consent to the clause being inserted as named by you.

We are, dear sir, yours, truly,

HENRY ROGERS' SONS & CO.

We enclose B. L. in duplicate for your pig-iron re-shipped per "Royal Charlie."

88 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, 29 June, 1867.

MR. ALEX'R. JACK, *Glasgow:*

DEAR SIR: Writer was at Cardiff yesterday to give evidence touching a commission sent home from Baltimore about the "Maggie Hammond," & one plea set forth by Willans is, that you or your agent (Mr. Singleton or some such name) refused to give up our names, & thus placed difficulties in Willans's way—the object of you or your agent being to make something out of it for yourselves—having demanded £150 as damages, & intending to give us £75. This is the pith of these charges against you. Please let us have a clear & succinct reply; & if you are unable to write us on Monday, so that we can receive your answer on Tuesday, then write on Tuesday to A. C. Twentyman, Royal Hotel, Cardiff; but this latter place will run us very close.

Dear sir, yours truly,

HENRY ROGERS' SONS & CO.

89 IRON, METAL, & HARDWARE MERCHANTS,
Wolverhampton, July 21, 1867.

A. JACK, Esq're, *Glasgow:*

DEAR SIR: We received your letter concerning Maggie Hammond, for which we thank you. Our reason for writing as we did, was that we expect to have to show the letters in court.

Yours truly,

HENRY ROGERS' SON & CO.

90 *Memorandum.*

21 NOV'R, 1867.

From Rogers' Sons & Co., Wolverhampton. Alex'r Jack, Esq., Glasgow:

Re "Maggie Hammond:"

What has been done in this matter? Our London office write us that average statement has been sent out to Montreal for average to be collected, & therefore cannot be obtained. We presume our friends may now pay. Please reply by return, as we must give an answer.

91 THE MARITIME INSURANCE COMPANY,
LIMITED ROYAL BANK BUILDINGS,
Liverpool, 26th Dec'r, 1868.

Messrs. W. D. RYRIE & Co., *L'pool.*

DEAR SIRS:

"Maggie Hammond:"

We are not at all satisfied with the adjustment by this vessel, & shall require all the documents in the possession of the average adjuster when the statement was made up.

We trust the owners of the cargo have not settled according to this adjustment, as we expect to be able to show that in several points it is clearly erroneous.

Yours, respectfully,

WM. RELTON, *Secretary.*

92 134 LEADENHALL ST.,
London, 11 *Jan'y* 1869—E. C.

A. JACK, Esq., 124 *St. Vincent st., Glasgow:*

DEAR SIR: We note price for Gartsherrie will now be 60s., and trust you will succeed in getting the 25 tons off by first steamer without fail

Maggie Hammond: We have seen Mr. Gann, but he simply acted as agent in the matter, and can afford no further information. The statement (which, of course, embodies the whole of the documents) was made up by Messrs. J. B. Davison, Son & Lindly, one of the largest and most respectable firms of average staters in the kingdom, and we should feel disposed to look upon enclosed merely as an excuse to postpone settlement.

We presume original documents are held by the owner.

Yours, truly,

H. ROGERS' SONS & CO.

93 [SEAL.]

Supreme Court of the United States.

SHIP MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

The annexed documents are the Exhibit "E" referred to in the examination of Alexander Jack taken under commission herein before us.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

ALEX. JACK.

94 [Willans & Co., late of the firm of Sidney J. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2267 CARDIFF, 21 *February*, 1867.

1123

ALEX. JACK, Esq., *Glasgow:*

DEAR SIR: We are in receipt of your favor of y'day, with copy of letter p. underwriters of "Maggie Hammond," and regret they object to the "George Durkee" as a substitute for her. This vessel was especially adapted for pig-iron freights, and to all probability will load a cargo of this nature from Ardrossan. We had hoped that this season, as compared with that when the "M. H." was chartered, would compensate for diff'ce of class, and satisfy u'writers. It would please us if they would reconsider the matter. As it is, we are looking out for another ship, and are, d'r sir, yours, truly,

WILLANS & CO.,
Per H'Y HANCOCK.

95 British & Irish Magnetic Telegraph Company, limited. In connexion with the Submarine and London District Telegraph
[2.] Companies.

——— STATION.

Received the following message the — day of ——— 186 .

30 —— 3

From	To
Name, Willans & Co.	Name, Alexander Jack.
Address, Cardiff.	Address, W. Geo. st., Glasgow.

No enquiry respecting this message can be attended to unless made within fourteen days from the date of the message.

Have taken Courrier for portion Montreal iron. Arrange to transfer policy, & wire immediately that all is in order. Reply paid.
10 55. 11 5. A. J.
(Indorsed:) 5. Telegram to & from Willans & Co'y, 30th March, 1867.

96 [Telegram to and from.]

Jack. Willans & Co., Cardiff:
Cannot fix without consent of shippers and underwriters. Send particulars to Courrier, and quantity she takes. Don't know her.
A. J. ALEX. JACK.

97 British and Irish Magnetic Telegraph Company, limited. In connexion with the Submarine and London District Telegraph [2.] Companies.

——— STATION.

Received the following message the 1 day of Ap'l, 1867.

From	To
Name, Willans & Co.	Name, Alex. Jack.
Address,	Address, West George st., Glasgow.

No enquiry respecting this message can be attended to unless made within fourteen days from the date of the message.

Is insurance transferred to Courrier? Telegraph immediately, as it put us to great inconvenience.

Answer. A. J. 1 35. 1 29.

98 Jack. Willans & Co., Cardiff:

Am certain neither shippers nor underwriters will allow shipment by "Courrier;" so delay till confirmed.

A. J. AL'X. JACK.

99 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2476

1274

CARDIFF, 20 *March*, 1867.

ALEX. JACK, Esq're, *Glasgow:*

DEAR SIR: In reply to your favor of y'day respecting Maggie Hammond's cargo, we beg to say that we are daily expecting a suitable vessel, but the prevalence of easterly winds has kept her back.

We apprehend that the underwriters will approve of any first-class vessel.

We will write you again shortly.

Meantime, we are, dear sir, yours, truly,

WILLANS & CO.

100 [Willans & Co., late of the of firm Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2665 CARDIFF, 30*th March*, 1867.

ALEXANDER JACK, Esq., *Glasgow:*

DEAR SIR: We this morning wired you: "Have taken 'Courrier' for portion Montreal iron; arrange to transfer policy, and wire immediately that all is in order;" & are in receipt of your reply: "Cannot fix without consent of shippers & underwriters. Send particulars of 'Courrier,' & quantity she takes. Don't know her."

The vessel is No. 926, English Lloyds 65, and is A1; she is 210 register, & is owned by D'd Price, Newport, & we have fixed her to carry from 350 to 380 tons, and we have written to Messrs. Rogers & Co. on the subject. Some trust that you will arrange matters satisf'orily with the underwriters, & please telegraph us as early as possible on Monday that all is in order. Don't fail to wire in any case.

Yours, faithfully,

WILLANS & CO.,
p. H. G. THOMAS.

101 [Willians & Co., late of the firm of Sydney D. Jenkins & Willians, shipbrokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2685 CARDIFF, 1*st April*, 1867.

ALEX'R JACK, Esq're, *West George st., Glasgow:*

DEAR SIR: We were surprised at not receiving a telegram from you this morning respecting the "Courrier," & have just wired you again on the subject.

We cannot understand the obstacles put in the way by some one, as the "George Durkee" refused because not first-class, is at once taken to carry a similar cargo, & now that we have taken up a first-class vessel, there is some demur. Please see that this is arranged, as we have had quite enough trouble with the iron, & can only now notify you that the vessel is prepared to take 350 tons of iron, & you must now take the responsibility of any delay.

Waiting your reply, we are, dear sir, yours, truly,

WILLANS & CO.

P. S.—Your telegram to hand, and we are surprised at is tenor. The ship being first-class in all respects, we can conceive no reason why shippers or underwriters should object.

W. & CO.

102 British & Irish Magnetic Telegraph Company, limited. In connexion with the Submarine and London District Telegraph
[2.] Companies.

——— STATION.

Received the following message the 2 day of Ap'l, 1867.

From	To
Name, Willan & Co.	Name, Alex. Jack,
Address,	Address, West George st., Glasgow.

No enquiry respecting this message can be attended to unless made within fourteen days from the date of the message.

Courrier has frequently loaded four hundred tons, but have arranged for her to take three fifty. Wire us at once.

11 47.

103 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2687

1372 CARDIFF, 2*d April*, 1867.

ALEX'R JACK, Esq're, *Glasgow:*

DEAR SIR: Your favour of yesterday is to hand, and we regret its contents are so much against taking a first-class ship for part of M. H.'s cargo. The quantity could easily be arranged; and she has, as we informed you, had 400 tons on board several times. However, after receipt of yours, we have stopped her coming, though we cannot be held responsible for the delay under these circumstances.

We are, dear sirs, yours, truly,

WILLANS & CO.

104 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2740 CARDIFF, 8 *April*, 1867.

ALEX. JACK, Esq're, *Glasgow:*

DEAR SIR: We have the "George Arkell," (just classed, AE1, for 5 years,) offered to take the lot of iron for Montreal, and we wish you to telegraph us to-morrow if underwriters will transfer policy to her; & if they do so, we will at once have the iron shipped.

This is the third vessel we have had in hand, & we hope she will not be refused.

If there should be any objections to the class, let us know the difference in the insurance.

Yours, truly,

WILLANS & CO.

105 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2732 CARDIFF, 9 *April*, 1867.

A. JACK, Esq'r, *Glasgow:*

DEAR SIR: Your telegram to hand: "Underwriters are in L'pool; can only be consulted by letter; will let you know their reply as to 'George Arkell.'" We wait your further advice; but cannot be sure as to whether owners will allow the matter to remain over until then, as we have not seen them since yours came to hand.

Yours, faithfully,

WILLANS & CO.,
p. H. E. THOMAS.

[Answ'd.—A. J.]

106 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Wiliams, as frequently addressed.]

2081 CARDIFF, 17*th April*, 1867.

ALEX. JACK, Esq'r, *Glasgow:*

DEAR SIR: We have an offer of the "Royal Charlie," 1st-class ship, to take on the 700 tons of pig-iron, ("Maggie Hammond's cargo,") filling up with cargo from another house; & possibly we may wire you that this is done before this reaches you.

As this is a first-class ship, & unexceptional in every way, we apprehend the underwriters will make no objection or raise any obstacle in this case.

We are, dear sirs, yours, faithfully,

WILLANS & CO.

[Answ'd.]

107 [Willans & Co., late of the firm of Sydney D. Jenkins & Willans, ship-brokers, coal-merchants, &c. Please note the name Willans, not Williams, as frequently addressed.]

2832 CARDIFF, 20*th April*, 1867.

1436

ALEXANDER JACK, Esq'r, *Glasgow:*

DEAR SIR: We are glad to note by your favour of yesterday, that the underwriters are willing to transfer the risk from the "Maggie Hammond" to the "Royal Charlie."

The chartering of this latter vessel is now in progress; as soon as com-

plete we will wire you to that effect, & will then thank you to let us have a certificate of the transfer of the policy.

Yours, faithfully,

WILLANS & CO.

108 [SEAL.]

Supreme Court of the United States.

SHIP MAGGIE HAMMOND
v.
THOMAS MORELAND AND OTHERS.

The annexed documents are the Exhibit "A," referred to in the examination of Alexander Jack, taken under commission herein before us.

WILLIAM G. BATESON,
PALGRAVE SIMPSON.
Commissioners.

ALEX. JACK.

Examined with the press copies handed to us and produced by the witness, Alexander Jack, and certified to be true copies of the same.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

109 [Copy.]

SEPT'R 19, 1866.

Messrs. HENRY ROGERS' SONS & CO.:

GENT'N: Referring to my inclosures of yesterday, I now send herewith cheque on Glasgow, in settlement of a|c as p'r statement enclosed. I trust you will find all correct and satisfactory as far as the settlement and recovery has gone.

We have still to recover the salvage amount (£189 12 7) from the owner's agents, and you may rely on my not losing sight of it.

I am sorry to see from Lloyd's report that the "Maggie Hammond" has just put back to "Milford Haven" with loss of sails & gear, and leaky.

I have seen the agents here, for the owner, but they are unable to say yet what they may do.

I am afraid they don't go out now this season.

I am yours, truly,

ALEX'R JACK.

[2 enclosures.]

110 [Copy.]

21ST SEPT'R, 1866.

Messrs. HENRY ROGERS' SONS & CO., *Wolverhampton:*

GENT'N: Favor of yesterday to hand, and this afternoon I wired you as p'r copy enclosed.

As far as I can find, no vessel will leave now for Montreal this season, and this one for Quebec seems the only chance loading at Greenock; the agents were open to fix for 300 tons @ 15|— to Quebec; but several shippers are after it, and whoever closes first is preferred; to-morrow morning we may be too late.

I have also seen the steamer agents; they do not expect to take over 100 or 200 tons pig-iron more this year, beyond what is engaged, and they ask 35|— p'r ton freight.

The close of the season has been very unfortunate for shippers to Montreal; almost every shipper here has a vessel disabled; some back to Greenock and some to Cork.

I have been enquiring into Glasgow hard spelter, and find the supply is limited; one maker has sold all his make for next 18 mo's, and as far as I have gone to-day, I don't see an immediate supply can be got at any price.

I hope to exhaust the enquiry to-morrow.

Y'rs, truly,

ALEX'R JACK.

[Enclosure.]

111 [Copy.]

SEPT'R 22*d*, 1866.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

D'R SIRS: I have your favor of 21st curr't, enclosing stamp policy p'r "Home," for which I am obliged.

I find the vessel at Greenock for Quebec will not work on point of insurance; she is low-classed, and the season is so far advanced, beside so many disasters to pig-iron vessels, the underwriters have got wild in their demands; they speak of 7 & 8 guineas for this vessel.

Lloyd's report says, the "Maggie Hammond" will haul up to get caulked above the copper, and then go to sea; but I am still afraid she will not venture to Quebec or Montreal this season; the agents here have not fixed yet, till they see how repairs proceed.

I have not found any hard spelter yet, but have one party still to see, which I hope to overtake on Monday. I called to-day, but could get no information.

Vessels here loading for Halifax & St. Johns, N. B., if you have anything to offer.

Yours, truly, ALEX'R JACK.

112 [Copy.]

SEPT. 27, 1866.

Messrs. HENRY ROGERS' SONS & Co:

GENT'N: Telegrams exchang'd as p'r copy enclosed. The agents of the "Maggie Hammond" don't know what to do with her, but I see they have given up all hope of sending her on this season. They speak of discharging at Liverpool, and perhaps the iron might be got disposed of there to better advantage than holding over the winter. The vessel for Halifax goes almost immediately. 15 was quoted at one time for pig-iron; now 16 is asked.

I enclose stamp-policy p. Polly with note of ac., as requested by London house.

Y'rs, truly, AL'X. JACK.

SEPT. 27, 1866.

Messrs. H'y Rogers' Sons & Co.:

To insurance p. "Polly" London p'y £280 50		7	— —
10 off £6 13		" 13	4
	£6	6	8
Add policy	"	9	9
Nett	6	16	5

Stamp policy enclosed.

113 [Copy.]

SEPT. 28, 1866.

Messrs. HENRY ROGERS' SONS & CO.:

GENT'N: Your favor of 27 to hand and noted. Welsh puddle-bar is by far the cheapest, but, it is red-short, and not suitable for export. North-of-England comes next, but it is very irregular, most of it cold-short, and some of the brands I would not take at any price. If it was found advisable to ship from that quarter, the different makes would require to be examined first on the spot, and one or two of the best selected. Scotch is the best of the three, but when orders are good in Scotland for finished bars, it is difficult to buy almost any puddle-bar. Most of the works have more finishing capacity than puddling capabilities; hence they have seldom puddle-bar to spare. Just now, however, everything is slack here, and I will open up the puddle-bar question & report. Lloyds report the "Maggie Hammond" is going into Cardiff. It occurs to me that the whole cargo might be sold there profitably, and would be better than keeping over the winter.

Perhaps you would drop me a line as to this.

Y'rs, truly,

AL'X'R JACK.

114 [Copy.]

OCT. 4*th*, 1866.

Messrs. HENRY ROGERS' SONS & CO.:

DEAR SIRS: Referring to "Maggie Hammond," my correspondents in Wales wish us to make an offer of the differents lots of iron while I invite offers from them. I find, however, we are not quite prepared yet to treat with them until we have come to an arrangement with both ship-owners & underwriters. From conversations I have had, I think the owners will give £100 or more to be relieved entirely of the freight at Cardiff, and I have submitted to the underwriters that they ought to return the premium paid. If we close the risk at Cardiff, this point is now under consideration with them. In order to enable you to make up your minds, as to selling price if it is agreed to take over the cargo, I give you particulars of present prime cost of such iron delivered in the Bristol Channel.

Eglinton	No. 1	62 3	p'r ton.
Do.	" 4	61 6	" "
Dalmillington,	" 4	58	" "

including net cost, freight, & insurance. Eglinton No. 4 is at a disadvantage, because it is scarcely known there; the others are shipped regularly.

I think our course is to wait the ultimatum of the ship-owner & underwriters, with this before you. You can then fix a limit of price to sell; but if you have anything to suggest, I will be glad to hear from you.

Puddle-bar I have been enquiring into, but, as explained to you, so little is done in selling Scotch, most of the makers have a difficulty in fixing a price. The lowest quotation I have is £5 nett
115 f. o. B. Glasgow. Some ask £5 15. My opinion is 1,000 tons or so might be got over the next few months at or about £5 per ton, with a definite order in hands. I could better test the market with the North-of-England. Just now, nothing can be done, as the works are all on strike.

I am, gent'm, truly yours,

ALEX'R JACK.

1ST OCTOBER, 1866.

Messrs. Rochsolloch Iron Co.:

Blue iron ore, 5 2, 15 6..... £3 19 1
Nett.
P'r boat.

116 [Copy.]

OCT. 27, 1866.

Messrs. HENRY ROGERS' SONS & CO.:

GENT'M: Favor to hand. I have called again to-day on Messrs. Edmiston & Mitchells, agents for the "Fleetwing," but they are yet without advice as to the salvage amount. They expect advices by next mail. As soon as I hear from them I will communicate with you.

The "Maggie Hammond," at Cardiff, is undergoing repairs and getting outfit. Meantime I am fencing with the agents as to a bonus for relieving the vessel & taking over the cargo. As long as the vessel is not ready for sea, they hold back as much as possible.

Yours, truly,

ALEX. JACK.

WOLVERHAMPTON.

P. S. I think you should get back from Montreal in the meantime the B. L. belonging to above.

A. J.

The "Endora" (same owners as the "Maggie Hammond") is a total wreck, with 700 tons pig-iron, Glasgow to Montreal.

117 [Copy.]

OCT. 31, 1866.

Messrs. HENRY ROGERS' SONS & CO., *Wolverhampton:*

DEAR SIRS: I wired you to day as per enclosed copy. A representative of the "Maggie Hammond" is here to-day from Cardiff, and will go the length of £75 to get cargo off her hands. I promised to wire you, & wait instructions. I have led the ship's agents here to understand all along not less than £100 was expected. There is a good deal to arrange on the event of your agreeing to a sum. The weight must be satisfactorily ascertained in some way before vessel leaves, and this will take time & expense. They also wish to recover all the bills L., & some of them will be on the other side; but I have no doubt your guarantee can be made sufficient.

I think on the whole we should try & come to an arrangement on something like the terms offering. I spoke to Colvin to-day, a shipper who has one or two vessels back, and he has relieved them, without thinking or knowing that any equivalent was obtainable.

I am, dear sirs, y'rs, truly,

ALEX'R JACK.

[One enclosure.]

118 [Copy.]

NOV'R 1, 1866.

Messrs. HENRY ROGERS' SONS & CO., *Wolverhampton:*

GENT'M: I have your favor of 31st ult.

It is not easy to work out this cargo satisfactorily. In order to dispose of the iron we would require to make offers of it at a price to a few of

the principal buyers in Wales, but the agent of the "Maggie Hammond" refuses to make his offer binding. I don't see there is the slightest risk in taking over this cargo, if the weight is shewn to be correct.

No. 1 Eglinton is going almost every week to Cardiff—price, cost, and freight not less than 62. Then No. 4 Dalmillington goes chiefly to Newport—costing, just now, 57 there. With No. 4 Eglinton the prospect is not so good, as this quality is scarcely known in Wales, but it will command, at least, Dalmillington prices. With such margins & the bonus offered by the ship, I don't see you are running almost any risk at all.

The insurance people fight very shy, and I am afraid little will be made of them. They grumble much at the heavy general average they will require to meet.

Y'rs, truly,

ALEX. JACK.

119 [Copy.]

Nov. 13, 1866.

Messrs. Henry Rogers' Sons & Co., *Wolverhampton:*

Gent'm: Would you put in hands, without a moments delay, 14,000 doz. spikes to tracing, & charge as low as possible?

I am afraid I would require delivery here not later than Saturday, the 24th curr't. Do you think this can be done? Send on by rail direct to my address.

There is no prospect of the "Maggie Hammond" taking over the iron at her own risk; the owners are foreign, and the captain alone is responsible here. Perhaps you would make me an offer of the cargo at so much pr. ton, leaving me to bargain with the captain & for the sale of the iron at my own risk. I see no other way to come to a conclusion.

Fleetwing agents are still without advice as to the salvage money. I think the agents have made some omission or neglect in writing, because the owners, Messrs. Ross & Co., are thoroughly respectable and business men.

Y'rs, truly,

ALEX'R JACK.

120 [Copy.]

24 Nov., 1866.

Messrs. Henry Rogers' Sons & Co., *Wolverhampton:*

Dear Sirs: I have your favor of 23rd. As to your first question, the underwriters would like to see the average claim before saying what they would do, but the agents think they will not only be willing to pay average, but something more to close the voyage, unless they become aware that the Maggie Hammond has sailed. As to the second question, it has not been submitted to the u'writers, but my agents say there is almost no doubt they will repudiate the risk, in the spring, after the vessel has returned from an intermediate trip. This is only a half-day hire; on Monday I will make further enquiry.

As to ship's agents buying the pig-iron, the agent here does not speak too favorably of Willans & Co., and says owners have no money on this side, as they wanted him to disburse the £75 offered, & he showed me to-day a/cs against these vessels, amounting to £1,200, standing unpaid. I think care should be taken, that the iron is not removed without payment being first made.

Yours, truly,

ALEX. JACK.

121 22ND APRIL, 1867.

Messrs. Henry Rogers' Sons & Co., *Wolverhampton*:

Dear Sirs: I have your favor of 19th inst.

I have had several conversations with the agent here, who is corresponding with the "Royal Charlie," and I find that while they are willing that shippers and consignees should be fairly treated, they are also resolved to protect the owner of the "Maggie Hammond" by taking shelter under legal advice. As yet they are not prepared to state their position, but they hint that the "Royal Charlie" is entitled, under arrangement with the "Maggie H.," to load and remove the cargo, and that without giving any new B's L. that they will place the vessel on arrival at Montreal, under the care of their own agent, who may refuse to give up the cargo unless under an arrangement which they consider reasonable & satisfactory. If they do give new B's L., they will ask for the original ones; and in an action pending against the "Maggie Hammond," it might be far from safe to give up all hold of the original documents. I think you would do well to ask good legal advice as to your position, and I have a hope that when they see you are fully prepared for them, and know your case that they may then agree to your terms.

Yours, truly,

ALEX'R JACK.

122 MAY 16th, 1867.

Messrs. Henry Rogers' Sons & Co., *Wolverhampton*:

Dear Sirs: I am favored with yours of 6th inst., & note arrangement as to shipment p. "Royal Charlie."

As we are led to believe this vessel is now loading, or at least, ready, the insurance agents are reminding me that the policy should be sent down for adjustment as early as possible.

Yours, truly,

ALEX'R JACK.

123 4TH MAY, 1867.

Messrs. Henry Rogers' Sons & Co., *Wolverhampton*:

Gent'n: I have your favor of 2nd, and have seen the insurance agents, who are ready to arrange policy between "Maggie Hammond" and "Royal Charlie." I would feel obliged by your letting me know the arrangement you have seen fit to agree to with the "Royal Charlie" in the matter of the B's L. You know I have 50 tons of the cargo at my own risk (Bills L. here), and would be guided by you as to the protection and security I am entitled to ask.

Yours, truly,

ALEX'R JACK.

124 MAY 23rd, 1867.

Messrs. Henry Rogers Sons & Co., *Wolverhampton*:

Gent'n: I handed over insurance policy "Maggie Hammond" to the agents here, to get clause inserted transferring risk. On receiving it back, I objected to the terms of the clause added, as you will see from the enclosed correspondence. The insurance company, you will notice, now propose to modify the clause as follows: "Warranted free from all claims arising from the non performance of the voyage p. "Maggie Hammond;" and I will thank you to say, by return, if you are satisfied with what they offer, or what you propose to substitute.

the principal buyers in Wales, but the agent of the "Maggie Hammond" refuses to make his offer binding. I don't see there is the slightest risk in taking over this cargo, if the weight is shewn to be correct.

No. 1 Eglinton is going almost every week to Cardiff—price, cost, and freight not less than 62. Then No. 4 Dalmillington goes chiefly to Newport—costing, just now, 57 there. With No. 4 Eglinton the prospect is not so good, as this quality is scarcely known in Wales, but it will command, at least, Dalmillington prices. With such margins & the bonus offered by the ship, I don't see you are running almost any risk at all.

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ALEX. JACK.

121 22ND APRIL, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: I have your favor of 17th curr't.

I have had several conversations with the agent here, who is corresponding with the "Royal Charlie," and I find that while they are willing that shippers and consignees should be fairly treated, they are also resolved to protect the owner of the "Maggie Hammond" by taking shelter under legal advice. As yet they are not prepared to state their position, but they hint that the "Royal Charlie" is entitled, under arrangement with the "Maggie H.," to load and remove the cargo, and that without giving any new B's L. that they will place the vessel on arrival at Montreal, under the care of their own agent, who may refuse to give up the cargo unless under an arrangement which they consider reasonable & satisfactory. If they do give new B's L., they will ask for the original ones; and in an action pending against the "Maggie Hammond," it might be far from safe to give up all hold of the original documents. I think you would do well to ask good legal advice as to your position, and I have a hope that when they see you are fully prepared for them, and know your case that they may then agree to your terms.

Yours, truly,

ALEX'R JACK.

122 MAY 16*th*, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: I am favored with yours of 6th inst., & note arrangement as to shipment p. "Royal Charlie."

As we are led to believe this vessel is now loading, or, at least, ready, the insurance agents are reminding me that the policy should be sent down for adjustment as early as possible.

Yours, truly,

ALEX'R JACK.

123 4TH MAY, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

GENT'N: I have your favor of 2nd, and have seen the insurance agents, who are ready to arrange policy between "Maggie Hammond" and "Royal Charlie." I would feel obliged by your letting me know the arrangement you have seen fit to agree to with the "Royal Charlie" in the matter of the B's L. You know I have 50 tons of the cargo at my own risk (Bills L. here), and would be guided by you as to the protection and security I am entitled to ask.

Yours, truly,

ALEX'R JACK.

124 MAY 23*rd*, 1867.

Messrs. HENRY ROGERS SONS & Co., *Wolverhampton:*

GENT'N: I handed over insurance policy "Maggie Hammond" to the agents here, to get clause inserted transferring risk. On receiving it back, I objected to the terms of the clause added, as you will see from the enclosed correspondence. The insurance company, you will notice, now propose to modify the clause as follows: "Warranted free from all claims arising from the non-performance of the voyage p. 'Maggie Hammond;'" and I will thank you to say, by return, if you are satisfied with what they offer, or what you propose to substitute.

The agents say all the underwriters aim at, is to free themselves of the expense of storage, &c., from and after the date of the "Maggie Hammond" completing her repairs.

I am, yours, truly, ALEX'R JACK.

[Enclosure.]

125 28TH MAY, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: I have your favor of 24th agreeing to "clause" in insurance policy. And I now enclose stamp policy with the required alteration, which I trust is satisfactory. I have to thank you for B. L. per "Royal Charlie," for the 50 tons shipped on my a c. Do you think you could arrange with Messrs. Morland, Watson & Co., to take over this iron as a consignment and to realize it as they best can, they charging me the usual commission; I would hand them over all the Bills L., & leave it with them to protect my interest in settling with the ship, as if the iron was their own. The original bills are drawn out, consigned to Messrs. Ross & Co., but under the circumstances they will not object simply to endorse them for Messrs. Morland & Co.'s use; and the additional bills will also require your indorsation, seeing that you are entered as the shippers & to your order.

Have the goodness to advise me on this at your early convenience.

I am, yours, truly, ALEX'R JACK.

[Policy enclosed.]

126 5TH JUNE, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: I have your esteemed favor of 29th ult., & note contents. I enclose you the renewed B. L. (two) p. "Royal Charlie," and will thank you to endorse them in favor of Messrs. James Hutton & Co., Montreal. I would esteem it a favor if you would put the whole thing in their hands, first, to realize the iron at best possible price without much delay; &, secondly, to make good any claim I have against the ship for loss of market, interest of money, &c., arising from the unnecessary delay.

If the agent in Cardiff pays the disputed item of storage from the time the "Maggie Hammond was ready to take in cargo until the Royal Charlie" sailed, then, I suppose, I have no claim on this side. I lose merely about 2 mo's' interest, and the difference, if any, between the market price at time of arrival of first spring ships and the price actually realized. Perhaps Messrs. Hutton could correspond with Messrs. Morland & Watson, who are so largely interested, & be guided by their claim.

If you think you can undertake this for me I will forward the original B's L. per "Maggie Hammond" to my friends, Messrs. Ross & Co., who will endorse them and hand the same over to Messrs. James Hutton & Co.

I am, dear sirs, yours, truly, ALEX'R JACK.

127 GLASGOW, *1st July*, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS: I have your favor of 29th ult. in re. "Maggie Hammond." In reply I have to state—

First. Willans & Co. never wrote me on the subject at all until after he had approached you, so that I had no opportunity of refusing to give up shippers' names. I never corresponded with them, and did not even know them in the matter.

Second. On the subject of owners paying a bonus to be relieved of the

cargo at Cardiff, I negotiated entirely with Mr. Singleton, the agent here, who chartered the vessel. I spoke all through to him of £150, as being a reasonable sum, expecting them to offer £100 at least; but the only definite offer he ever made me was £75; this offer, he said, was made by Capt'n Anderson, of the "Royal Charlie," acting on behalf of the owners, and was the ultimatum.

Third. The captain of the "Maggie Hammond" had given to him here, before sailing, unstamped copies of B. L., bearing on the face of them who were the shippers, so that Messrs. Willans & Co. were in a position to see at once what they wanted.

For myself, therefore, I have to give Messrs. Willans & Co.'s insinuations and assertions the lie direct.

As to Messrs. Singleton & Co., I called on them and explained my object; they at once denied the truth of Messrs. Willans & Co.'s
128 statements; showed me all the letters from Willans & Co. referring to the "Maggie Hammond," and handed me their letter-book to read the replies for myself. I examined the whole, and convinced myself there were no other letters on either side. At my request they gave up Willans & Co.'s letters, and cut out the original copies of replies from their letter-book; these I now send to you (to be carefully returned). The letters speak for themselves, & will show you whether Willans & Co. asked for and were refused the shippers' names. I have gone over them, and think Messrs. Singletons' replies state very fairly the progress of the negotiation going on. One or two remarks Mr. Singleton makes which were not authorized by me, but they are not material. The negotiations between Mr. Singleton and myself were all verbal mostly "on 'change."

I think I have put the matter fully before you. If I can assist you further with any explanation I will be glad to do so.

Yours, truly,

ALEX'R JACK.

129 FEB'Y 20*th*, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS:

"Maggie Hammond:"

I enclose copy of underwriters' reply to our proposals in this case. I send fair copy also to Messrs. Willans & Co., Cardiff, without making any comment upon it. It is their interest now to look out immediately for a good vessel that the u'writers will approve of.

Yesterday I quoted to you price of Gartshorrie No. 1, but I see part of St. Johns order is for No. 2 Gartshorrie, which is quoted 56'1 per ton.

I am, dear sirs, truly yours,

ALEX. JACK.

P. S.—Received your favor of yesterday enclosing copy letter from your Montreal correspondents concerning Maggie Hammond.

A. J.

[Enclosure.]

130 APRIL 3*d*, 1867.

Messrs. HENRY ROGERS' SONS & Co., *Wolverhampton:*

DEAR SIRS? I wrote you on Saturday last, saying that the "Courrier" was offered to take about 360 tons of "Maggie Hammond's" cargo of pig-iron, & asking if you were disposed to divide the cargo. I am surprised that I have no reply.

Yours. truly, ALEX. JACK.

131 APRIL 16, 1867.

Messrs. HENRY ROGERS' SONS & CO.:

GENT'N: I enclose invoice & B's L., (three for shipment of pig-iron p "Odalisk," St. Johns, N. B.;) all which I hope you will find in order & correct.

The captain of the Royal Charlie, now in Dublin, has asked their corresponding agent here to enquire if the underwriters of the "Maggie H." are willing to transfer the risk to the "Royal Charlie." This afternoon the underwriters agree to the transfer, and I expect this vessel will now be offered to take on the cargo at once to Montreal. I will thank you to let me know if you have any remarks to offer on carrying out such an arrangement.

Y'rs, truly,

ALEX'R JACK.

[4 enclosures.]

132 [SEAL.]

In Supreme Court of United States.

SHIP MAGGIE HAMMOND
v.
THOMAS MORELAND & OTHERS.

The documents hereto annexed are the Exhibit C referred to in the examination of Alexander Jack taken before us under commission herein.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

ALEX. JACK.

Examined with the press-copies handed to us and produced by the witness Alexander Jack, and certified to be true copies of the same.

WILLIAM G. BATESON,
PALGRAVE SIMPSON,
Commissioners.

133 20TH FEB'Y, 7.

Messrs. WILLANS & CO., *Ship Agents, Cardiff:*

DEAR SIRS: Messrs. Henry Rogers' Sons & Co., Wolverhampton, have just writen me regarding the "Maggie Hammond," and enclosing copy of your letter to them there anent. I brought your letter before the underwiters, & now enclose their reply, to which I ask your attention.

I am, dear sirs, yours, respectf.,

.ALEX. JACK.

[Copy letter enclosed.]

134 MARCH 19*th*, 7.

Messrs. WILLANS & CO.:

GENT'N: I have been expecting to hear from you that you have engaged a good vessel to take the Maggie Hammond's cargo from Cardiff to Montreal.

The season is now advancing, and this iron should be dispatched immediately. I think you understand the vessel must be approved by the underwriters.

Yours, truly, ALEX. JACK.

Ship-brokers, Cardiff.

135 7TH APRIL, 7.

Messrs. WILLANS & CO., *Cardiff:*

GENT'N: I wrote Messrs. Rogers on Saturday, asking their advice as to shipping the "Maggie Hammond's" cargo, or part of it, by the "Courrier," and I expect their answer to-morrow. Pending this enquiry, the agents here will do nothing, as the underwriters are in Liverpool, and it is only labour thrown away to annoy them, & find afterwards the Messrs. Rogers object to dividing the cargo.

My opinion is, after weighing the contents of your letter, to hand this morning, first, that the shippers will insist on the cargo going complete in one vessel; but supposing they do not, then, secondly, that the u'writers will object to the small size of vessel, and even if they did not, they certainly would never allow her to take 360 or 380 tons. Here we never ship more than register tonnage & one-third dead weight, which would make 280 tons only. Anything over this is sure to affect the insurance.

I enclose copy telegrams exchanged, and will advise you further as I am instructed.

Y'rs, truly,

ALEX. JACK.

136 11TH APRIL, 7.

Messrs. WILLANS & CO., *Cardiff:*

DEAR SIRS: I have your favor of 9th curr't. The Liverpool underwriters again object to the vessel "George Arkell" They say she is quite unsuitable for a cargo of 700 tons pig-iron, and therefore will not discuss the question of extra premium. All they ask is a vessel of a class equal to the "Maggie Hammond," to which they would transfer the risk without extra.

Yours, truly,

ALEX'R JACK.

137 19 APRIL, 7.

Messrs. JOHN RIDALL & SON, *Belfast:*

D'R SIRS: I note yours of 18th, and I enclose invoice for pigs & bars. The bars are now complete; & on enquiry, yesterday, at steamer, I found the 30 tons Clyde (first lot) were delivered, & they as well as balance of 25 tons were to go by steamer yesterday, this being "Good Friday." I ordered remaining 30 tons of Clyde last night.

Pig-iron keeps very firm with the prospect of sale on Tuesday. Buyers over @ 52 prompt.

Y'rs,

ALEX. JACK.

[2 inclosures.]

19 APRIL, 7.

Messrs. WILLANS & CO., *Cardiff:*

D'R SIR: (Yours of 17th.) The underwriters are willing to transfer risk from "Maggie Hammond" to "Royal Charlie."

Yours, truly,

ALEX. JACK.

Jurisdiction

Story Conflict Sec 322 b-

SUPREME COURT OF THE UNITED STATES.

No. 306.

THE SHIP "MAGGIE HAMMOND," ETC.
AMASA DURKEE, CLAIMANT, *Appellant,*

vs.

THOMAS MORLAND, CHARLES STANHOPE WATSON AND JAMES ROSE.

BRIEF OF APPELLANT.

F. W. BRUNE,
ARTHUR GEO. BROWN,
For Appellant.

SUPREME COURT OF THE UNITED STATES.

No. 306.

THE SHIP "MAGGIE HAMMOND," ETC.
AMASA DURKEE, CLAIMANT, *Appellant*,

vs.

THOMAS MORLAND, CHARLES STANHOPE WATSON AND JAMES ROSE.

(In this Brief the *Transcript of Record* is thus referred to, (p. —); the *Additional Evidence*, thus, (Ad. Ev. p. —).

BRIEF OF APPELLANT.

This is an appeal from a decree of the Circuit Court of the United States for the Circuit of Maryland, (p. 131,) affirming a decree of the District Court of the United States for the District of Maryland. (p. 130.) The facts are as follows:

In August, 1866, Henry Rogers, Son & Co., iron merchants, of Wolverhampton, England, agents of Appellees, (p. 11,) shipped several parcels of iron per ship "Maggie Hammond," then lying at Ardrossan, Scotland, and bound for Montreal, Canada, consigned to Appellees. The bill of lading is on page 5. August 24, 1866, the "Maggie Hammond" sailed with this cargo of pig iron for Montreal. September 7, she encountered a heavy gale, and on the night of September 8 it was determined to bear away for a harbor of refuge. September 17, she came to anchor in Milford Haven. Surveys were held September 18 and 25, the result of which was that the ship, being found unseaworthy, was ordered to Cardiff, the nearest convenient port, there being no facilities for landing and storing cargo at Milford Haven. At 2 P. M., September 28, the "Maggie Hammond" was moored in East Dock, at

Cardiff; where, after surveys, her cargo was ordered to be discharged, and the ship was sent into dry dock for repairs. October 9, 1866, the captain and first officer made their protest, embracing a full statement of the perils encountered and injuries received, (pp. 107, 8, 9,) and alleging that, when repairs were completed, the season would be too far advanced for the ship to complete the voyage to Montreal before winter.

The Judge of the District Court, in his opinion, (pp. 129, 130,) says:

"Now, the master of the 'Maggie Hammond' should either have reloaded the iron on board his ship on the 5th November and proceeded on his original voyage; and if he had done so he might have reached Montreal before the St. Lawrence was closed with ice; or if, when it became necessary to unload his cargo at Cardiff for repairs, it was apparent to him that they could not be completed in time to justify him, as a prudent shipmaster, in proceeding on the original voyage in his said vessel, on account of the lateness of the season, as appears by his protest to have been his opinion, it was his duty to have transhipped Libellants' iron to another vessel, in order that it might have been delivered to Libellants before the port of Montreal would be closed with ice.

"Having failed to do either, the Court hold that the ship is responsible for the difference between the value of the iron at Montreal, had it reached there on the 15th of December, 1866, and its value in July, 1867, when it did actually arrive, with interest on the value of the iron from 15th December, 1866, to July 22, 1867, and interest on difference in value to this date."

The decree of the District Court, affirmed by the Circuit Court, (p. 131,) is therefore based on the theory that it was possible for the master of the "Maggie Hammond" to procure a suitable vessel to carry his cargo to Montreal that same autumn after October 9, 1866, and that it was his duty so to transhipp.

Appellant, nevertheless, respectfully insists that, under the circumstances disclosed by the record and additional evidence, it was practically impossible to send forward the iron after October 9, and that any such attempt on the part of the master of the "Maggie Hammond" would have been rash and foolhardy in the extreme.

I.

Could the master of the "Maggie Hammond" have sent forward his cargo to Montreal by another vessel after October 9, 1866?

The District Judge, in the statement of facts embraced in his opinion, (p. 129,) asserts "that at that time there were many vessels at Cardiff; and one could easily have been procured to transport Libellant's iron to Montreal before the close of the season."

It is respectfully submitted that the latter statement is unsupported by the evidence, which, on the contrary, shows that vessels never sail for Montreal so late in the season; that efforts to procure a substitute for the "Maggie Hammond" made both at Cardiff and Glasgow as early as September 21, failed on account of the season being then already too far advanced; and that the insurance companies have standing rules against such ventures.

Amasa Durkee, shipmaster, Answer foot p. 13; middle p. 14.

Charles Howes, shipmaster, Answer 2d, 3d, 4th and 5th Interrogatories, pp. 15, 16.

Nelson Mosher, shipmaster, Answer 4th and 5th Interrogatories, pp. 17, 18.

Henry Archbald, merchant, Answer 3d, Cross-Interrogatory, p. 42.

John Willans, shipbroker, consignee at Cardiff, Answer 4th and 5th Interrogatories, pp. 56, 57.

Wm. Y. Edwards, shipowner and surveyor, Answer 5th Interrogatory, p. 62.

James Fraser, dock-master, Answer 5th Interrogatory, p. 65.

"ADDITIONAL EVIDENCE."

John W. Ford, merchant and shipowner, Answer 1st, 2d, 4th Interrogatories, p. 5, and annexes pp. 20, 1, 2, 3, 4; 2d, 3d Cross-Interrogatories, p. 6.

James Goodwin, shipbroker, Answer 1st, 2d, 4th Interrogatories, p. 7; 1st, 2d Cross-Interrogatories, pp. 7, 8.

Wm. Coward, master-mariner, Answer 1st, 2d, 4th 6th Interrogatories, pp. 8, 9; 1st, 2d Cross-Interrogatories, p. 9.

Wm. Y. Edwards, ship owner and broker, Answers 2d, 4th, 6th, 8th Interrogatories, p. 10; Answers 3d Cross-Interrogatory p. 11.

Bryce Allan, ship owner, Answers 1st, 2d, 4th, 6th Interrogatories, pp. 11, 12; Ans. 1st, 2d Cross-Interrogatories, pp. 12, 13.

John S. De Wolf, ship owner, Answers 1st, 2d, 4th, 6th Interrogatories, pp. 13, 14; Answers 2d, 3d Cross-Interrogatories, p. 14.

Henry North, underwriter, Answers 1st, 2d, 4th, 6th, p. 15.

Arthur W. Singleton, ship owner and merchant, Answers 1st, 2d, 4th, 6th Interrogatories, pp. 16, 17 and annex. p. 25; Answer 3d Cross-Interrogatory, p. 17.

Alexander Jack, Answers 1st, 2d, 4th, 6th, 8th, pp. 18, 19; Answer 2d Cross-Interrogatory, p. 19.

John K. Evans, Answer 4th Interrogatory, p. 20.

Lists of Vessels sailing from Great Britain for Canadian ports, pp. 20, 21, 25, 26.

Regulations of Insurance Companies about such voyages, pp. 22, 23, 24.

On these points the testimony of Alexander Jack (Ad. Ev., pp. 18, 19, 20), is peculiarly full and satisfactory. Mr. Jack, himself an iron merchant, was the *agent of the shippers* in Glasgow, who chartered the "Maggie Hammond," and conducted on their behalf, both before and after that vessel had put back to Cardiff, all negotiations with the agents of Appellant. He says (Ad. Ev., p. 18,) in answer to 1st Interrogatory, "I have had considerable experience for the last ten or twelve years in the trade between Great Britain and Canada, more particularly in the shipment of iron from the Clyde," &c. In answer to 2d Interrogatory, "*I should not consider it safe to despatch a vessel from Cardiff for Montreal later than the 21st of September, unless it is intended that the ship should remain ice-bound in the St. Lawrence during the winter, which is not customary.*" In answer to 4th Interrogatory, "The latest sailing vessel which left the port of Glasgow for Montreal in the year 1866, was the 'Annie McKenzie,' which sailed on the 19th day of September."

In answer to 6th Interrogatory, (Ad. Ev., foot p. 18,) "After about the 21st of September the premium of insurance becomes very heavy, and it is difficult, in fact, to effect insurance at any reasonable price."

In answer to 8th Interrogatory, (Ad. Ev., p. 19,) "I can only add that I had a small shipment of fifty tons of iron in the 'Maggie Hammond,' and I was of opinion that the vessel could not have safely proceeded to Montreal that season, after putting back damaged, and having to undergo repairs." All this is abundantly confirmed by the correspondence between Mr. Jack and his principals, Henry Rogers, Son & Co., shippers of the iron per "Maggie Hammond," which shows that, as early as *September 20th*, as soon as they learned that the "Maggie Hammond" had returned to Milford Haven, and eight days before she reached Cardiff, Henry Rogers, Son & Co. applied to Jack to "ship 300 tons pig-iron to Montreal to replace that shipped for the vessel which has put back into Milford Haven—'Maggie Hammond.' We are afraid there will be no other chance." (No. 57, Ad. Ev., p. 27,) This was in answer to a letter from Jack to them, (No. 109, Ad. Ev., p. 40,) reporting that "Maggie Hammond" had put back to Milford. Jack adds, "I am afraid they don't go out now this sea-

son." So important did the shippers think the saving of a day that September 21st they telegraphed to Jack, (No. 60, Ad. Ev., p. 28,) "Will 'Maggie Hammond' sail again this season?" In answer to which Jack telegraphed that he thought not; (No. 59, Ad. Ev., p. 28,) and same day, September 21st, wrote a letter to Henry Rogers, Son & Co., (No. 110, Ad. Ev., p. 40,) in which he says, "As far as I can find no vessel will leave now for Montreal this season, and this one for Quebec seems the only chance," &c.

"The close of the season has been very unfortunate for shippers to Montreal; almost every shipper here has a vessel disabled; some back to Greenock and some to Cork."

Same day, September 21st, Henry Rogers, Son & Co. wrote to Jack, (No. 58, Ad. Ev., p. 27,) "If you have reason to suppose that the 300 tons pig-iron per 'Maggie Hammond' will not be sent on this season, and can replace it by the vessel to Quebec *a*15, and insure *a*50, or not over 60s.; please supply a duplicate lot."

To which, September 22d, Jack replied, (No. 111, Ad. Ev., p. 41,) "I find the vessel at Greenock for Quebec will not work on point of insurance; she is low-classed, and the *season is so far advanced, beside so many disasters to pig-iron vessels, the underwriters have got wild in their demands*," &c.

September 27th, (No. 112, Ad. Ev., p. 41,) Jack informed Henry Rogers, Son & Co. that agents of 'Maggie Hammond' "had given up all hope of sending her on this season."

It thus appears that Henry Rogers, Son & Co. were fully informed of the impossibility of sending over the "Maggie Hammond" in the autumn of 1866, and that they recognized that impossibility. Further, that, being anxious to get 300 tons of iron to Montreal that Autumn, they made efforts to procure transportation of another lot, in lieu of that on board the "Maggie Hammond," but failed, because there was but one vessel up, and she for Quebec, (a safer voyage than to Montreal, because of shorter river navigation), and because the insurance companies were "wild" in their demands on account of frequent disasters that season.

The agents of Appellant made similar efforts at Cardiff to procure another vessel in order to tranship the iron with like result.

See Answers of W. Y. Edwards, ship broker, to 8th Interrogatory in chief, and 3d Cross-Interrogatory, (Ad. Ev., pp. 10, 11.)

The Record thus shows:

1. It is not considered safe for sailing vessels loaded with pig-iron to sail from British for Canadian ports later than September 10th to 21st, and that efforts made by Appellees' agents, as early as

September 20th, 1866, (based on the mere newspaper report that "Maggie Hammond," had put into Milford Haven in distress, and before she had been surveyed) to procure transportation of a duplicate lot of iron to Montreal, failed, because of the lateness of the season.

That *before* October 9th, (when surveys were completed, and Captain's protest was made), as soon as Appellants' agents had reason to suppose that the "Maggie Hammond" would prove to be disabled for the season, they made efforts to procure a substitute for her, through three ship-brokers in Cardiff, which efforts likewise failed, for the same reason. (Edwards' Ans. 8th Int. and 3rd Cross Int. Ad. Ev. pp. 10, 11.)

2. The principal Insurance Companies of Great Britain, in their time-policies, absolutely prohibit vessels from sailing to any port or place in British North America after July 25th to August 7th, (Ad. Ev. pp. 22, 23, 24), and first class companies refuse to insure to those ports after about September 10th on any terms. *Ford* Ad. Ev. 6th Ans. p. 6. *Goodwin*, do. p. 7. *Coward*, do. p. 9. *Edwards*, do. p. 10. *Allen*, do. p. 12. *DeWolf*, do. p. 14. *Singleton*, do. p. 17. *Jack*, do. p. 18, 19. Letter No. 111, do. p 41.

3. Voyages to British North American ports are considered peculiarly dangerous; as is shown by time-policies of eight Insurance Companies, Ad. Ev. pp. 22, 23, 24, which prohibit voyages for those ports later than July 25th to August 7th, but allow vessels to sail for ports in the Baltic, Gulf of Bothnia, Finland or to Riga, as late as September 12th.

4. Voyages to the River St. Lawrence are considered even more perilous than to other parts of British North America. (See Limitations of "The Universal Marine," and "London and Prov. Marine Insurance" Companies, Ad. Ev. p. 24.)

The proof therefore, shows, conclusively that the Master of the "Maggie Hammond," could not have procured a vessel to carry forward his cargo after October 9th; and that Appellees' efforts to send a duplicate lot to Montreal about September 20th, failed.

Still less was it possible to carry it forward in "Maggie Hammond," after November 5th, when the repairs were completed, as suggested by District Judge, (p. 130.)

(Twentyman 4th Ans. p. 68.)

The freezing of a river is such an act of God as excuses performance of a contract to transport thereon.

Story on Bailments, § 511, 545, *a*.
Redfield on Carriers, § 27.
Worth *vs.* Edmonds, 52 Barbour, 40.
Parsons *vs.* Hardy, 14 Wendell, 215.
Bowman *vs.* Teall, 23 Wendell, 307.
The Flash, Abbott, 119, 121.
Hand *vs.* Baynes, 4 Whart. 204, 213.
Briddon *vs.* Great Nor. R'way, 28 L. J., (N. S.) Exch. 51.
Hudson *vs.* Ede, Law Rep., 2 Q. B. 566.
S. C., 3 Id. 412.

But such dangers, when foreseen, are to be avoided.

When, after the experience of many years, the commerce between two countries is, by common consent and custom of ship-owners, shippers and underwriters, limited within certain well defined periods of the year, by reason of the annual recurrence of natural obstacles, which necessarily render navigation impossible or excessively difficult and dangerous, the prudent ship master is bound to take notice of such custom, and would not be justified in sailing two thousand miles, in order to discover whether or not the usual order of nature had for once been reversed.

Such a well ~~defined~~ founded apprehension of dangerous obstacles justifies delay in the performance of a contract, as fully as would the actual encountering of the obstacles themselves; and a ship master is as much bound to avoid them in the one case, as to try to escape from them in the other.

The contract in the bill of lading, made so late in the season, must be taken as made with full knowledge of this custom of trade, and the delay which might result from it.

Bradstreet *vs.* Heron, Abbott, 209.
Gracie *vs.* Mar. Ins. Co., 8 Cranch, 75.
Broadwell *vs.* Butler, 6 McL. 296.

Appellant therefore insists that the decree based on the theory that the iron should, by some means, have arrived at Montreal by December 15th, 1866, must be reversed.

II.

Appellant does not, however, admit that even if it had been possible for the Master of the "Maggie Hammond" to procure a suita-

ble vessel, it would have been his duty, under the circumstances, to trans-ship his cargo, and attempt so to send it forward to Montreal during the autumn of 1866.

1. Because the relations of the ship and cargo being reciprocal, the Master had a right to retain the cargo until such time as his own ship might be repaired and in a condition to carry it forward.

1 Parsons' Mar. Law, pp. 158, 159, and notes.
Flanders on Ship. § 244.
Merchants Ins. Co., *vs.* Butler, 20 Md. 41, 42, 56.
2 Am. Lead. Cases, 472, *et seq.*

2. Because the Master of the "Maggie Hammond," as agent of all parties interested, was bound to take such care of the cargo intrusted to him as a prudent man would take of his own property, and no man of ordinary prudence would have exposed valuable property to such perils as are shown by the Record to beset the navigation of the St. Lawrence at that late season of the year.

3. Because even if it had been possible to find a vessel to undertake such a venture, the underwriters could not have been held responsible for loss or damage of the cargo incurred in so perilous a voyage, and one so essentially different from that originally contemplated.

Hand *vs.* Baynes, 4 Whart. 204.

4. The Master and owner of the "Maggie Hammond" were in no respect insurers of time, nor against unforeseen and unavoidable circumstances. Their contract simply was, (p. 5,) on an ordinary Bill of Lading. In consequence of one of the excepted perils, incurred in the effort promptly to perform that contract, its completion was rendered impossible during the autumn of 1866.

Supposing it had been possible to hire another vessel to take forward the iron that autumn, it could only have been at ruinous rates of freight and insurance.

To import into the contract the duty and obligation to resort to such extraordinary means, would destroy its mutuality; and make the owner of the "Maggie Hammond" responsible as an insurer of time, with only the compensation of an ordinary carrier.

Briddon *vs.* Great Northern Rail Way, 28 L. J. (N. S.) Exch. 51.
Morrison *vs.* Davis, 20 Penna. 171, 175.
Reed *vs.* Dick, 8 Watts, 478, 482.

Shilling on Carriers Am Ed p 114 note

5. Such a trans-shipment, if possible, would have been improvident and unjustifiable.

As agent of shippers, owner and underwriters, the Master had no right to subject any or all of them to the ruinous rates of freight and insurance, which such a proceeding would have involved.

Particularly, when his own ship was capable of being rendered sea-worthy in less than thirty days.

Hugg *vs.* Augusta Ins. Co. 7 Howard, 595, 609.

III.

It can hardly be argued that, after November 5th, when the repairs to the "Maggie Hammond" were completed, (Cabell, 3d Ans., p. 19,) the Master should have resumed his cargo and made sail for the Gulf of St. Lawrence, with the view to remaining ice-bound during the winter, (Alex. Jack ad. ev. p. 18,) unless the event should prove that, by some miracle, the navigation had been kept open fifty days later than the latest date, which the experience of years had shown to be safe for approaching that river.

Such conduct would imply criminal recklessness of the safety of crew, cargo and ship; and would have exposed all to almost certain destruction. (Twentyman 4th Ans. p. 68.)

Although the latest sailing vessels which ventured to sail for Canadian ports during the autumn of 1866, were from London, "Anne Forster," Sept. 15th, (Ad. Ev. p. 21;) Glasgow, "Gleniffer," Sept. 12th, (Ad. Ev. p. 25;) Liverpool, "Michigan," Sept. 17th, (Ad. Ev. p. 26;) it yet appears from the testimony of Rudolf, harbor-master, (5th Answer p. 21,) that "navigation closed at Montreal on the 15th day of December, 1866." The District Judge relies on this fact in his opinion (p. 130,) to show that if the Maggie Hammond had resumed her voyage after Nov. 5th, she might have reached Montreal before navigation closed.

It is submitted that the master of Maggie Hammond could not anticipate that such would be the case; but that, on the contrary, the experience of years dictated a different course, which it was his duty to pursue.

Blyth *vs.* Birmh. Water Works, 25 L. J. (N. S.) Exch. 212.

The position of the Master of the "Maggie Hammond" at Cardiff, Nov. 5th, 1866, was analagous to that of a ship-master, who, at a harbor of refuge, receives due notice of the establishment of a blockade by a belligerent power, of his port of ultimate

destination. *Non constat* but that the war may be of short duration; and that, while he is crossing the ocean, the blockade may be raised, and the event may prove that, if he had made the attempt, it would have succeeded.

But this possibility would not justify a master in running the risk of capture and condemnation, in order to find out.

Much less would it render him liable for damages for not making such an experiment, although afterwards, it be shown that, if it had been made, it might have proved successful.

If this be true of an obstacle interposed by a human power, for a transient purpose, to last for an uncertain time, with how much greater force does the argument apply to the present case, where Appellees (Watson, Question and Answer, foot p. 10,) find fault with the Master of the "Maggie Hammond," for not attempting impossibilities, and setting himself in opposition to the course of nature.

It is to be noted that at ports of Nova Scotia and Newfoundland, even if accessible, during the winter, the iron in question would, for practical purposes, have been no nearer to its destination than at Cardiff; while it is contended that the insurance would have been forfeited by such a deviation, and that there was no obligation to go to any one of those ports, nor any good end to be accomplished by attempting so to do. (Answer top p. 8.)

Marshall Marine Ins 215

IV.

Under these circumstances, the contract, contained in the original bill of lading, to transport the iron to Montreal, with reasonable despatch, still subsisted; the performance of it was simply adjourned, until such time as it could be completed with safety and propriety; *i e* . as soon as navigation opened in the spring of 1867; and meanwhile, it was the master's duty to take the best care possible of the cargo.

Parsons *vs.* Hardy, 14 Wendell, 215, 218.
Bowman *vs.* Teall, 23 Wendell, 306.
Broadwell *vs.* Butler, 6 McL., 296.
Hadley *vs.* Clarke, 8 T. R., 259.
Briddon *vs.* Great Nor. Rivy, 28 L. J. (N. S.) Exch. 51.
The Flash, Abb., 119, 121.
Hand *vs.* Baynes, 4 Whart., 204, 213.
Ship Nathl. Hooper, 3 Sumner p. 542.
Story on Bailments, § 545, *a*.

Accordingly, the iron was warehoused in the East Bute Dock, at Cardiff, and there remained until re-shipped. (Willan's Ans. 11th Int. p. 60.)

The cargo was necessarily stored, pending the repairs.

After these were completed, there was no necessity for the "Maggie Hammond" to resume the cargo, and lie waiting at the dock, for five months.

The cargo was much better cared for in the warehouse, and safer from fire, rust, collision, tempest, leak, and bilge water.

The duty of the "Maggie Hammond" to transport the cargo to Montreal would not have been promoted by keeping it in her hold all winter. A vessel is a carrier, not a place for storage.

Negotiations ensued, with a view to induce the shippers of the iron to release the "Maggie Hammond" from her contract and resume their property; Appellant's agents offering to give up all claim for freight; Appellee's agents were willing to do so for a bonus of £100; which, Appellant's agents declining to pay, the negotiations terminated with a full recognition of the duty of Appellant's vessel to carry on the cargo in the spring.

(Letters A, H, B, C, K, F, M, G, N, pp. 74, 75, 76, 78.)

November 22, 1866, the "Maggie Hammond" sailed from Cardiff on an intermediate voyage to Baltimore, because agents considered it unreasonable to keep her lying idle at Cardiff until April, and fully expected she would return in time to complete her voyage in the spring.

(Willans, Answers 6 and 8, pp. 57 and 58, and Exs.)

Appellees had no right to complain of this intermediate voyage unless it was in some respects an infraction of Appellant's contract to transport their iron. They had no right to control the movements of the "Maggie Hammond," nor any interests in her movements, except such as grew out of that contract. Appellant's obligation was to be ready at Cardiff early in April, 1867, to resume the cargo. Meanwhile his duty to shippers required him simply to refrain from doing anything which he had reason to suppose would incapacitate him from fulfilling that duty.

Ordinary voyage for a vessel of class of the "Maggie Hammond" between the United States and England is 30 days, (Cabell 4th Cross-Interrogatory, p. 20); between Scotland and Montreal 40 days, (Watson, p. 9). There is some evidence to show a practice to undertake an intermediate voyage under such circumstances.

(Durkee, Answer foot p. 13).

Howe, 3rd Ans. p. 15, and 5th, p. 16.

Mosher, 4th Ans. p. 17.)

Under ordinary circumstances the Maggie Hammond had abundant time to return to Cardiff in good season to transport the iron in the Spring, but having encountered unusual storms and perils of the sea, (Mosher 6th Ans. p. 18,) the "Maggie Hammond" reached Baltimore, February 17, 1867, after a voyage of 87 days.

(Cabell 2d cross Ans. p. 20)

V.

There, February 26, 1867, she was libelled by Appellees, (p. 4.)

The allegations of the libel are—

1. That the voyage had been abandoned.

It is submitted that the proof shows that the voyage had not been abandoned by Appellant nor the contract rescinded by Appellees; but that, up to the time the libel was filed, it had been treated as *a subsisting contract* by both parties; a contract, the performance of which was, for the time being, prevented by the act of God, but to be performed in future, and that it so continued to be regarded by all, until the cargo was finally delivered to Appellees, at Montreal, by a ship of Appellant, which had been substituted, by consent of the shippers and underwriters, for the "Maggie Hammond;" that by consent of the underwriters the original policy of insurance on the cargo was transferred to cover the risk by the substituted vessel; and that the freight stipulated for in the bill of lading was paid by consignees on delivery of the cargo. That, at the very time the libel was filed, charging an abandonment of the voyage, the Appellees' agents were treating with Appellant's agents in England for the final completion of his contract when the proper time should arrive, viz: April 1, when the spring fleet sails from British ports for the St. Lawrence.

Appellant refers to Answer p. 8; letters January 3, February 4 and 7, pp. 46, 47, 48, Willans' 8th Answer, pp. 57 and 58 and exhibits therein referred to.

Appellees are therefore estopped from asserting that the contract had been abandoned, and cannot recover.

Goodman *vs.* Pocock, 69 Eng. Com. Law, 576.

Jones *vs.* The Floating Zephyr, 7 Am. Law Reg., 494.

A contract cannot be said to have been abandoned on February 26 which all parties treated as still subsisting in April and May following.

Letter, dated Wolverhampton, April 18, 1867, pp. 51, 52; ditto, dated Cardiff, April 25, 1867, p. 105.

2. The libel charges that an improper disposition had been made of the iron.

It has already been shown how and why the iron had been stored at Cardiff. (Willans' Answer 11th Interrogatory, p. 60.)

It was at the date the libel was filed, still lying at Cardiff, under care of the warehouse-man, and subject to a notice, served November 27, 1866, (No. 74, p. 109,) on the proprietors of the dock, by the solicitors of the shippers. (Ingleden's 9th Answer, p. 72.)

For this order, and its legal consequences, Appellees are fully responsible; because it was made on their behalf by their general agents in England, (Watson, p. 11;) because these agents promptly notified Appellees of this order by letter, (Mem., dated November 27, 1866, p. 44,) which letter was duly received by them, (Letters, dated Montreal, December 14, 17, 1866, pp. 45,46.)

This "attachment" order was subsequently directly approved by Appellees, who advised its continuance. (Letter, dated Montreal, March 22, 1867, p. 50.)

March 7, 1867, p. 49, Appellees' agents wrote to Appellees: "We are vastly pleased to receive your Mr. Watson's note, dated Baltimore, 21st February, and to observe prospects of redress. It will be just as well to telegraph us perhaps if we may withdraw 'stop' on cargo at Cardiff, for we might be in a fix and not know what to do, and liable for damages, &c.; meanwhile, of course, we follow instructions conveyed in note to us, and keep hold on the iron."

As to effect of this stop on the relations of the parties, and custody of the cargo, see Willans' 9th Answer, p, 59, and Letters 8, 11, 13, 52, 57, 61, 63, 64, 65, 66, 70, pp. 84, 85, 100, 102, 3, 4, 5, 6.

This stop was finally removed May 3, 1867. (No. 75, p. 110, and Ingleden's 9th Answer, p. 72,) by a notice, directing the Dock Master *to deliver the iron to Appellees' agents, on their order.*

Appellant contends that this "stop," if it did not amount to such a resumption of possession on the part of Appellees as to avoid the contract, was, at least, such an interference with the rights of Appellant as absolved him from all obligation to transport Appellees' iron during its continuance, and from all claims for damages for failure so to transport.

Angell on Carriers, § 332.
2 Parsons on Contracts, (5th Ed.) p. 299.
Luke *vs.* Lyde, 2 Burrow, 882, 3, 7.
Parsons *vs.* Hardy, 14 Wendell 215, 218.
Lorent *vs.* Keating, 1 Nott & McC. 132, 3, 5.
Rossiter *vs.* Chester, 1 Doug. (Mich.) 154, 5 and 176.
Reed *vs.* Dick, 8 Watts 479.

3. The charge that at the date of the libel, no efforts were being made by Appellant to transport Appellees' iron is denied in the answer (p. 8.) and sufficiently disproved by the voluminous correspondence already referred to. (Ante p. 12.)

4. The Libel charges that by reason of the failure of the said Master, and on the part of said ship to perform the aforesaid contract, the libellants have sustained damage, &c.

How and when was there a failure to perform the contract?

It has been already shown on principle and authority (Ante p. 10) that, it being impossible to carry forward the iron during the autumn of 1866, the obligation so to do was suspended until April 1st, 1867; and that in addition to this, Appellant was deprived of the control of the iron from November 27, 1866, to May 3d 1867, by the act of the Appellees. Therefore, when the libel was filed, the time for the performance of the contract had not arrived; so it was impossible that there could have been any breach, or any damage incurred.

Jones *vs.* The Floating Zephyr, 7 Am. Law Reg. 494.

If Appellees ever sustained any damage for which Appellant could be held responsible, it was for a failure to deliver the iron at Montreal at the time the Spring fleet arrived from England, about the first of May, 1867.

But damages for such failure cannot be recovered in an action for injuries, *alleged to have been already suffered*, instituted February 26, 1867.

Bradley *vs.* The Steam Packet Co., 9 Peters, 107.

February 26th, 1867, when this case was instituted, it was quite impossible to say whether or not the iron, when ultimately delivered, would sell at a profit or at a loss. The claim for damages, presented in the libel, was, therefore, essentially, a claim for *speculative profits*, which the court cannot undertake to estimate or assess.

The Gentleman, Olc. 110, 119.
S. C., 1 Bl. C. C., 196, 202.
The Tribune, 3 Sumner, 144, 151.

VI.

The case of Hochster *vs.* De Latour, 2 Ellis & B., 678; 20 Eng. L. and Eq., 157, which Appellees mainly relied on below, is not

a case in point. Because there the promisor *repudiated* his contract, which was not this case. Because it cannot be judicially determined that, on the 26th February, 1867, it was *absolutely impossible* for the "Maggie Hammond" to return from Baltimore to Cardiff by April 1st, (an interval of 33 days,) in time to resume her cargo and sail with the spring fleet. Because Appellees, by libelling the "Maggie Hammond," contributed to prevent her from making the attempt, which might have proved successful. Because Appellees had received no present injury at the time of the action; and because the ability of the Appellant, substantially to perform his contract, might have been fully restored before the day for its performance arrived, either by the return of the "Maggie Hammond" to Cardiff, or by the acceptance or tender of some other equally good vessel, instead of her, for which negotiations were then going on, as already shown.

2 Parsons on Contracts, (5th Ed.) p. 666.
Powell on Carriers, p. 142,

VII.

The Appellant contends that a failure to carry forward the cargo in the spring is not the breach of contract or duty set forth in the libel; and that, under the allegations of the libel, the Appellees cannot recover damages for any failure to transport the cargo in the spring, and that evidence of any such damages is outside of the issue made by the pleadings.

2 Parsons on Ship. and Adm. p. 491.
McKinlay *vs.* Morrish, 21 How. 343.
The Hoppet *vs.* U. S., 7 Cranch, 389.
Jenks *vs.* Lewis, Ware, 51.
Sch. Boston, 1 Sumner, 328, 331.
The North American, Swabey Adm. 358.
The Ann, Lush, Adm. 55.
The Despatch, Id. 98.
The Haswell, Brow. & L. Adm. 247.
The Amalia, Id. 311.

VIII.

But if Appellees can recover anything in this action, and Appellant should be held liable for the difference between the value of the iron when it might have been delivered, (in the spring,) and when it was actually delivered in Montreal, it is insisted that

Appellees were, themselves, responsible for most of the delay which ensued, after April 1st, in despatching the iron from Cardiff.

The "Royal Charlie" sailed from Cardiff, with the "Maggie Hammond's" cargo, about May 25th. (Letter 27, p. 90.)

Prior to April 20th, the "Royal Charlie" was approved by the underwriters, and the policy of insurance transferred. (Letter Ad. Ev. foot p. 49.)

Most of this delay was caused by the refusal of Appellees' agents to remove the "stop," or permit the iron to be shipped. (Letters 10, 11, 65, 67, 68, 70, pp. 84, 85, 104, '5, '6.)

Appellant contends that this interference was unwarrantable and that he cannot be held responsible for the delay caused by it.

Appellees and their said agents seem themselves to have entertained this view.

(See letters dated Wolverhampton, March 7th, 1867, p. 49, and Answer, dated Montreal, May 10th, 1867, p. 55.)

The amount of iron consigned to Appellees was 300 tons. See Bill of Lading page 5.

March 30th, before the time arrived for the sailing of the Spring fleet,—Appellant's agents, offered to Appellees' agents the "Courier," a first class vessel, capable of carrying 350 tons. (Willans' 10th Answer, page 59, No. 61, page 103.)

The original cargo per "Maggie Hammond" consisted of four parcels of iron, consigned to four different parties in Canada, and was covered by four separate Bills of Lading. Two sets of Bills of Lading covered 350 tons, the amount of Appellees' iron, and a small lot, (say Jack's shipment of 50 tons, 8th Answer Ad Ev. page 19,) beside.

This amount Appellant's agents proposed to send by the "Courier," and applied, by telegram and letter, to Appellees' agents to remove the "stop," in order that they might be enabled to do so. (Nos. 41, 42, page 96;—61, 62, page 103.)

Appellees' agents refused to remove the "stop," or permit this portion of the cargo to be forwarded by the "Courier," on the ground that the original cargo should not be divided. Whereupon Appellant's agents protested against this course, and against Appellant's being held responsible for the delay which it entailed. (No. 63, pages 103, 104.)

The cargo being in separate lots, it is contended that Appellant's agents had a right to ship it in separate parcels, provided each consignment was kept distinct.

But for this interference, Appellees' iron might have arrived in Montreal at the earliest possible time, with the Spring fleet, and, if it had, no damage would have been suffered by them.

It should also be noticed that, as early as February 15th, Appellant's Agents offered the "George Durkee," to take out the whole cargo in April. (Willan's 10th answer, p. 59. Nos. 42, p 96, and 59, p. 102.)

That, April 8th, they offered the "George Arkell," an A. E. I. vessel, for five years, (Willan's 10th answer, p. 59, and No. 44, p. 97,) and offered themselves to pay the difference in insurance, if any, (No. 25, p. 90,) but that Appellees' agents still refused to remove the "stop," or let the iron go.

Also, that Appellant urged his said agents to use the greatest diligence, writing and telegraphing per Atlantic cable, (S, T. V and W, pp. 80 and 81,) and that they not only offered the vessels above mentioned, but that one of said agents went to Havre, Liverpool and London, to try to get a vessel to take the iron, and communicated by letters and telegrams to other ports for the same purpose. (Willans' 10th Ans. p. 59)

F. W. BRUNE,
ARTHUR GEO. BROWN,
For Appellant.

IX

all the parties to the contract in this case are British subjects. It was made in Scotland + the freight was to be paid in Montreal at 20 shillings per ton, (p. 5) that is currency of Canada, which is coin. The District Judge first calculates the amount of damage in gold, (pp 25 37, 130) + then reduces it to paper currency of the U.S. Appellant contends that the decree should have been for gold dollars

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Supreme Court of United States.

No. 306.

THE SHIP "MAGGIE HAMMOND,"

vs.

THOMAS MORLAND, AND OTHERS.

APPELLEES' BRIEF.

S. T. WALLIS,
J. H. THOMAS,
For Appellees.

MURPHY & Co. Printers and Stationers, 182 Baltimore street, Baltimore.

Supreme Court of the United States.

No. 306.

THE SHIP "MAGGIE HAMMOND"

vs.

THOMAS MORLAND, AND OTHERS.

APPELLEES' BRIEF.

On 23d August, 1866, the "Maggie Hammond" took on board for the Appellees a cargo of 300 tons of Dalmilington Iron, to be transported from Ardrossan to Montreal. Bill of lading, p. 5. She sailed on the 24th, and in consequence of stress of weather, returned to England, reaching Milford on the 17th September, and Cardiff on the 27th. She came to anchor at Milford on Sept. 18th. (Protest, pp. 107–8.) On the 9th October, the master made formal Protest at Cardiff, stating that it had been ascertained by surveys, that she could not be repaired in time to complete her voyage before the close of the season. See Protest, pp. 107–8–9.

Her repairs were completed on the 3d of November, and the surveyors on that day certified that she was in condition to pro-

ceed on her voyage. All the repairs recommended by the surveyors, except remetalling had been made.

See page 93—Exhibit No. 33.

The master did not intend to re-copper her, p. 87. Exhibit No. 18.

She was therefore completely ready for sea. The average voyage from ports of Great Britain to Montreal is from 35 to 40 days, p. 17. Ans. 3.

From Cardiff about 10 or 12 hours less than from Liverpool, p. 120.

The navigation of the St. Lawrence to Montreal, closed on the 15th December, 1866, and was open in the Spring of 1867, on the 22d April. (Answer 5, p. 21.) It had not usually, in previous years, closed earlier than this. (Answer to 2d cross-int., p. 22.) The first vessel from sea in the Spring arrived 4th May, p. 21. Ans. 5.

While negotiations for a compromise were going on, the vessel loaded and sailed for Baltimore with another cargo on the 21st November, (pages 98-9—Exhibits 49 and 50,) leaving the cargo of Libellants in store at Cardiff. It was subsequently forwarded per ship "Royal Charlie," by the agents of the Maggie Hammond. The "Charlie" did not sail from Cardiff, until about the 29th of May, in the next year, (p. 59,) nor did she arrive with the cargo at Montreal, till the 22d of July.

(Ireland's testimony, p. 110, ans. to 1st int.)

The Maggie Hammond arrived at Baltimore, on 17th February, and finished discharging her cargo on the 27th, p. 20.

She was chartered back to Ireland and was expected to arrive there on 15th or 20th of April, which was nearly a month after the Spring fleet usually leaves the English ports for Montreal, (p. 14,) and confessedly too late for the opening of the Spring voyages.

Exhibit U., p. 80.
" 56, p. 101.
" 22, p. 89.
" 58, p. 102.

She was libelled by the Appellees on the 26th of February, for breach of her contract with them, p. 2.

The Appellees will contend that—

1st. It was the duty of the "Maggie Hammond," immediately on the completion of her repairs, to take on board their cargo, with all possible despatch, and sail for the port of destination. If she had begun loading the day after, allowing her two days to load, she could have started on the 5th of November, and if she had made the voyage in 35 days, she would have arrived on the 10th of December; and if she had made a voyage of 40 days, the longest spoken of by any of the witnesses, she would have arrived at Montreal on the 15th, while the navigation was still unobstructed. Supposing her to have made neither the longest nor the shortest average voyage, but one of intermediate length, she would have reached Montreal in 37 days from Cardiff, (or 37½ from Liverpool,) that is, by December 12th. During the five preceding years the navigation to Montreal, had only twice closed earlier than that, and on one of those two occasions only one day earlier. The chances were therefore as three to two, or, it may be said, four to one, that she would meet no obstruction. (Rudolph's answer to 2d cross-int., p. 22.) Those

chances, the Libellants were entitled to, and she had no right to lose them, or rather throw them away, for her own benefit and to their prejudice.

At all events, by proceeding on her voyage as soon as she was ready for sea, the Maggie Hammond would have had the reasonable chance of reaching her port of destination that season, and the certainty of arriving as near there as possible, so as to be ready to proceed to it with all despatch at the first opening of navigation in the Spring. This was her clear duty under the circumstances.

3 Kent's Commentaries, 210.

Schilizzi vs. Derry, 82 E. 6, L. Rep., 872.

Oliver vs Md Ins. Co. 7 Cranch 493

There was no reason to apprehend ice or any other unusual danger or detention before reaching the St. Lawrence. If she had encountered ice dangerously, in the gulf of St. Lawrence or the river, or had learned on arriving in the vicinity that it was dangerous to go farther, she might have put into the nearest port.

2 Parson's Maritime Law, 299.

And she could have sent on her cargo by land if necessary, which, in such case, it would have been her duty to do.

1 Parson's Maritime Law, 161.

Bryant vs. Com. Ins. Co., 6 Pick, 131.

The testimony as to the time at which vessels, under no such obligation, ordinarily sail, is not applicable to one in her situation. She was bound, under the circumstances, to meet the difficulties of the navigation, even if they did expose her to the

risk of being ice-bound in the St. Lawrence until the Spring, which was the only unusual peril she would have encountered. Her encountering it under the circumstances, would not have affected the insurance of either ship or cargo, for it would have been but the prosecution of a usual voyage, begun during the usual season and only interrupted by sea perils, insured against and therefore contemplated. None of the evidence in regard to the difficulty of procuring insurance at the ordinary rate for late voyages, is applicable to the case of a voyage already begun and which the ship was bound to prosecute whether insured or uninsured.

The restrictions shown to be usual in the policies for such voyages are only applicable to them as extra-hazardous, and therefore not insurable at the usual rates. Extra premiums would, of course have removed that difficulty, if indeed it existed at all under the circumstances in controversy.

Other vessels did leave the Southern ports of France, which were farther off, very nearly as late in 1865–'66. Page 22.

One left Liverpool on the 27 September, and cleared again from Montreal on the 28th November—p. 119, Ans. 4.

One left London as late as October 17th, and the official lists of clearances from London, Glasgow and Liverpool, show that, in every year, vessels cleared from each of those ports long after September 1st. From the 18th to the 20th of October, seems to have been an established and regular period for leaving London, for various preceding years.

See add. evid. Exhibit 2, p. 21.
" " 49, p. 25.
" " 54, p. 26.

If it was ascertained that her repairs could not be completed in time to make the voyage during the season, it was her duty to send on the cargo by another vessel.

1 Parsons on Maritime Law, 161.
Hugg vs. Augusta Banking Co., 7 Howard, 604.
Propeller Niagara vs. Cordes, 21 Howard, 24.
1 Parsons on Shipping and Admiralty, 234 n., 334 n.

The docks at Cardiff were crowded with unemployed vessels.
Page 16, ans. 3; p. 18, ans. 2.

If, as is now sought to be proven, it was on the 18th September when she anchored at Milford, notoriously too late for her to resume, or hope to resume, her voyage, or procure another vessel for the special purpose, she might and ought to have forwarded, or to have attempted to forward, her cargo by the ship which left London on the 17th of October, a month later, and which appears to have had a regular day or time of sailing that must have been generally known.

(Add. evid. Exhibit 2, p. 21.)

And this, even if it involved land carriage.
Bryant vs. Com. Ins. Co., 6 Pick, 131.
1 Parson's Marit. Law, 161.

If she could herself have carried the cargo before the close of navigation, or could have got it there by another vessel, there is no error in the decree appealed from. She ought, at all events, not to have deserted the cargo—not to have left it subject to storage and other charges—but to have started with it as soon as possible in the Spring.

If she had started with the first Spring fleet, she would have had the cargo in Montreal, on the 22d of April. It reached there on the "Royal Charlie," on the 22d of July. If not liable for the damages decreed against her, she is liable for the difference in value of the iron at the opening of navigation in the Spring, and at the time when it did arrive. It was worth at the opening of navigation in the Spring, $31.97 per ton. See p. 37.

300 tons at $31.97 per ton, were worth on 22d April, 1866, - - - - - - - - -	$9,591 00
Interest to 22d July, - - - - - -	143 00
Appellees ought to have had July 22d, - -	$9,734 00

When it arrived on 22d July, it was worth $7,525.71.
See page 123.

The loss calculated to 22d July, 1866, was therefore,	$2,208 29
Add interest to 26th Oct., 1867, the date of decree,	165 62
	$2,373 91

So that even if the decree is reversed, the Appellees ought to have a decree for this amount, with interest, from the 26th Oct., 1867, and the costs of the Court below.

The "Stop," as it is called, did not interfere with the "Maggie Hammond" bringing on the cargo. The negotiation for sending it on by another vessel opened with the admission that her intermediate voyage had incapacitated her from discharging her duty.

See Exhibit U, p. 80.
" " 56, p. 101,
" " 22, p. 89.
" " 58, p. 102.

Rogers Sons & Co. asked nothing but that the bills of lading for another vessel should correspond with those by the Maggie Hammond, and no time was consumed in the negotiation, on that point, except from 18th April to May 1st, when the agents of the ship finally acquiesced, as they should at first have done, in the lawful and reasonable demand of Rogers Sons & Co., instead of refusing, as they at first did. (Exhibit 64, p. 104.) This was the only delay which can properly be attributed to the "Stop." See reference No. 1 below

"The Royal Charlie" had not, in fact, been chartered as late as the 20th of April.

(Exhibit 47, p. 98.)

The Messrs. Rogers, instead of delaying, facilitated the shipment, by releasing the underwriters from any claim for non-performance of the voyage by the "Maggie Hammond," that being the only condition on which they would consent to transfer the risk to another vessel—the underwriters insisting that they were not liable for any expense incurred after she was ready for sea.

Ad. ev. Exhibit 124–5, pp. 45–6.

(No. 1 (Exhibits 10, 11, 13, pp. 84, 85 and Exhibits 64 to 70, pp. 105 and 106.) That the demand of Rogers Sons & Co. was a proper one, see

1 Parson's Maritime Law, 162.

1 Parson's Shipping and Admiralty, 235.)

The real cause of the delay in forwarding cargo in the Spring, was that the owner of the Maggie Hammond instructed his agents to procure the consent of the underwriters to the transmission of the cargo by another ship.

(Exhibit P, p. 79, and Exhibit U, pp. 80, 81.)

And although the

~~The~~ underwriters were willing to transfer the risk to any vessel of the same class, (Exhibit 48, p. 98.) ~~But no ship~~ none satisfactory to them was offered until the "Royal Charlie" was named.

Willans' Testimony as to vessels offered, p. 59, and as to the refusal of them.

Exhibit 48, p. 98,

" 36. p. 94,

" 37, p. 95.

But even if Willans or any one else who assumed to interfere with the shipment by any other vessel erred, they were not the agents of the Appellees, and the rights of the latter cannot be affected by such error. The Libellants disaffirmed such interference.

(See Watson's Testimony, p. 39, and Exhibits letters of 3d and 10th May, pp. 54, 55)

The action was not prematurely brought, even to recover damages for breach of duty in the Spring.

Hochster vs. De La Tour, 75 E. C. L. R., 678.

Wilson vs. Tapley, 18 Howard, 519.

The Salem's cargo, 1 Sprague, 392.

The Isaac Newton. Abbott 17.

The owners of the "Maggie Hammond" through their agents had rendered it physically impossible for that vessel to fulfil even the secondary duty referred to, by sending her on a voyage from which she could not return in time.

See Exhibit 22, p. 89.

" " U, p. 80.

" " 56, p. 101.

The very making of the voyage to Baltimore was, in itself, a breach of the contract with the Appellees. It was as absolute a breach as could be committed. The right of action was complete at the time of libel filed, although the actual amount of damages was ascertained and increased by the subsequent protracted delay.

The evidence introduced in this Court, since the hearing and decree below, is entirely devoted to proving the impossibility of finding a ship to carry forward the cargo from Cardiff when the Maggie Hammond was disabled. That point was obviously and distinctly involved in the case at the hearing below, and was the subject of a good deal of proof theretofore taken. The whole of the testimony now introduced and relied on, for the first time, might have been taken as readily, and ought to have been taken, during the long period which elapsed between the filing of the libel and the trial of the cause in the District Court. The decree below pointed out the defect of the Claimant's case in the particular regard, and the new proof is brought in to supply the deficiency. In no event is it presumed that a reversal procured by such proof would carry costs in this Court.

Carrigan vs. The Charles Pitman, 1 Wallace, Jr., 307.
Schooner Margaret vs. The Conestoga, 2 Id., 116.

But the proof will be found to establish, not merely the difficulty of obtaining a ship in the autumn, but the reasons from which that difficulty arose, viz: the difficulty of procuring insurance at the ordinary rates, and the objection which owners had to send their vessels out to Montreal when it was too late—

not for them to arrive there, but for them to return the same season.

See Allan's testimony, p. 13; Jack's testimony, 2d ans., p. 18.

These objections were not insurmountable. They raised the simple questions of additional premiums and additional freight money, which the ship and her owners were bound to meet. It could have been on no other ground than a sense of obligation to meet them, or to send forward the Maggie Hammond herself; that the claimant, Durkee, admitted that he had discharged the Master for having failed to use due diligence in forwarding the iron in the autumn.

Watson's testimony, p. 10.
Durkee's " p. 13.

S. T. WALLIS,
J. H. THOMAS,
For Appellees.

Mr. Justice Clifford

Supreme Court of the United States.

No. 107, December Term, 1869.

THE SHIP "MAGGIE HAMMOND," ETC.

AMASA DURKEE, CLAIMANT, *Appellant.*

vs.

THOMAS MORLAND, CHARLES STANHOPE WATSON AND JAMES ROSE.

Appeal from the Circuit Court of the United States for the District of Maryland.

Printed argument filed on behalf of Appellant, in accordance with leave granted by order of Court in the premises, passed March 21st, 1870.

F. W. BRUNE,
ARTHUR GEO. BROWN,
for Appellant.

Supreme Court of the United States.

No. 107, December Term, 1869.

THE SHIP "MAGGIE HAMMOND," ETC.
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Appeal from the Circuit Court of the United States for the District of Maryland.

Printed argument filed on behalf of Appellant, in accordance with leave granted by order of Court in the premises, passed March 21st, 1870.

I.

"Had the Libellants a lien upon the ship for the performance of the contract of affreightment at the place where the contract was made" (Ardrossan, Scotland, p. 5,) "or by the law of the place where the contract was to be performed?"—(Montreal, Canada, p. 5.)

1. By the law of Scotland, Libellants had no lien cognizable by Courts of Admiralty.

By Statute 1 Will. IV., Ch. 69, the Scotch Admiralty Courts, which up to that time had possessed very limited powers, were abolished, and their jurisdiction was vested in the Court of Session, the ordinary Municipal Courts of the country.

The jurisdiction of the Court of Session is *in personam* in all cases, and summons in Admiralty causes does not differ from summons in ordinary causes.

Bell's Dic. Law of Scot., Tit. "Court of Admiralty," pp. 29, 30.

1 Shand's Prac. Court of Session, p. 413.

The *maritime hypothec* doubtfully spoken of by Mr. Bell, in the 2d volume of his Commentaries on the Law of Scotland, (5th ed., fol. p. 39,) does not apply to this case. After speaking of the implied hypothecation of the civil law, and remarking that English Courts of Admiralty have no jurisdiction over such a *privilegium*, he says: "In Scotland, there is no such obstruction to the operation of the general principle, *though there is no authority or precedent for establishing it as admitted with us.*" * * * "But there seems to be no reason to deny the privilege which the Maritime Law gives for all losses and injuries done to the cargo; and *probably in our Court of Admiralty* the remedy would accordingly be given." It will be perceived, therefore, that in 1826, when that edition was printed, Mr. Bell was very doubtful about this hypothec, and, if enforceable at all, he thought it would be recognized only by the Scotch Court of Admiralty. As we have seen, that Court has since 1826 been entirely abolished, (July 23d, 1830,) and the jurisdiction of the Court of Session, in which it was merged, is in all cases, maritime as well as civil, *in personam*, as already shown by reference to Mr. Bell's later work, just published.

So the hypothec, if it ever existed, is extinct, and no Scotch Court has power to recognize or enforce it. It could hardly, therefore, be recognized or enforced by an American Court.

See also, upon this point, Steamer S. Lawrence, 1 Black, 529.

The existing Scotch law on these points may be satisfactorily ascertained from a decision by the Privy Council, in the case of the Bold Buccleugh, (7 Moore's P. C. Cases, 267.)

A Scotch steamer ran down an English vessel in English waters. Afterwards, the steamer being at her home port, suit was brought in the Court of Session, in Scotland, for the damage, and the steamer was arrested under process of that Court, but released upon bail. Subsequently, the steamer having come into English waters, she was again arrested, under process of the

English Admiralty Court, and an action for damages commenced in that Court, for the same cause of action as was still pending in Scotland.

The owner of the steamer appeared under protest in the Admiralty Court, and pleaded first *lis alibi pendens.*

Held, that the plea of *lis alibi pendens* was bad, as the suit in Scotland was in the first instance *in personam*, the proceedings being commenced by process against the persons of the owners of the vessel, and the arrest of the steamer only collateral to secure the debt, while the proceedings in the Admiralty Court in England were, in the first instance, *in rem* against the vessel, and, therefore, *the two suits being in their nature different,* the pendency of one could not be pleaded in suspension of the other. The Court say, (p. 286,) "We have already explained that, in our judgment, a proceeding *in rem* differs from one *in personam*, and it follows that the two suits being in their nature different, the pendency of the one cannot be pleaded in suspension of the other.

2. By the law of Canada they had no lien.

The *Code Maritime* of France has now no force in Canada. For that Code was a part of the *droit public*, and consequently was superseded by the effect of the conquest, and if it was law in the admiralty jurisdiction of that time, whether it was a part of the public law or of the common law, it was abolished by the marine law of England.

Baldwin *vs.* Gibbon, King's Bench, Quebec, 1815. Robertson's Dig. Lower Canada, Rep., p. 361.

The jurisdiction of the Vice Admiralty Court of Lower Canada is very limited, and similar to that of the English Court of Admiralty before the power of the latter Court was enlarged by acts of Parliament.

See 2 Will., IV, ch. 51.

It was decided in the case of The Friends, Stuarts' Vice-Admiralty Cases Lower Canada, p. 112, that the Court of Admiralty, except in prizes, exercises an original jurisdiction only on grounds of authorized usage and established authority. It has no jurisdiction *infra corpus comitatûs.*

The Admiralty jurisdiction as to torts, depends upon locality, and is limited to torts committed on the high seas.

Torts committed in the harbor of Quebec are not within the Admiralty jurisdiction.

The commission of the Judge of that Court, dated 1841, (?) runs as follows:

"Victoria, by the Grace of God," &c.

"We do by these presents make, ordain, nominate and appoint you," &c., "to be our Commissary in our Vice-Admiralty Court in our Province of Lower Canada in America, and territories thereunto belonging.

"And we do hereby grant unto you full power to take cognizance of, and proceed in, all causes civil and maritime," &c., &c., "and such causes, complaints, contracts, and other the premises aforesaid, or any of them, however, the same may happen to arise, be contracted, had or done to hear and determine *according to the civil and maritime laws and customs of our High Court of Admiralty in England.*"

6 Lower Canadian Jurist, pp. 296-7.
The Friends, Stuarts Vice-Admiralty Cases, L. C., p. 115.
Preface to Stuarts Vice-Admiralty Cases.

Prior to the passage of the English Adm. Court Act, 1861, 24 Vic., ch. 10, the powers thereby conferred did not belong to and were never exercised by the English High Court of Admiralty: (Williams & Bruce Adm. Prac., p. 85,) and said Act does not extend to Canada, or any other British dependency, it merely confers a limited jurisdiction, in certain specified cases, on the Admiralty Courts of England and Wales. British colonies are not bound by any acts of Parliament unless particularly named therein.

1 Broom's Commentaries, p. 121.
1 Stephens' " (6th ed.) pp. 109, 110.

An examination of the Acts of Parliament relating to Canada, cited 1 Stephens' Com., (6th ed.) pp. 110, 112, n., will show that the jurisdiction of the Vice-Adm. Court of Lower Canada, has not been materially changed since that Court was first established, and that it has no powers similar to those conferred on English Adm. Courts by 24 Vic., ch. 10.

So there was no lien by the Canadian Admiralty Law.

By the Municipal Law of Lower Canada, there was none.

The *Saisie-arrêt* provided for by Cons: Stat. Lower Canada, ch. 83, secs. 46, 47, is merely a right of summary attachment,

based upon an affidavit that the debtor is about to secrete his property, or abscond with intent to defraud, &c. It is essentially a *personal action*.

Therefore the first question must be answered in the negative.

II.

Appellant now proceeds to discuss the second point stated; at the same time protesting that the law of the place where the contract was made, or the law of the place where it was to be performed, should settle the respective and reciprocal rights and obligations of the parties to it. And that the fact that the Maggie Hammond was driven *in invito*, into Cardiff, as a mere harbor of refuge, made no change in the original contract, or the law by which it was governed.

"Did the act of the master in landing and storing the goods, and accepting new employment for the ship, when the repairs were completed, create a lien upon the ship in favor of the libellants, at the place" (Cardiff, Wales,) "where the cargo was landed, stored and left."

Not unless it was created by 24 Vic. ch. 10, secs. 6, 35,—for prior thereto no jurisdiction existed over cases like the present, and no lien was given for breaches of contracts of affreightment.

See Williams & Bruce Adm. Prac., 85.
The Ironsides, 1 Lush., 458.
The Kasan, Brow. & Lush., 1.
Morewood *vs.* Enequist, 23 How. 494.

Admitting, for the sake of argument, that all the facts necessary to entitle the High Court of Admiralty to assume jurisdiction under 24 Vic., ch. 10, concurred in this case,—that November, 1866, no owner or part owner of the "Maggie Hammond" was domiciled in England or Wales, that Appellees' goods were "carried" into a port of England or Wales, within the meaning of the Act, that "accepting a new employment for the ship when the repairs were completed," &c. constituted a "Breach of Duty, or Breach of Contract," within the meaning of said Act; (see post, p. 9.)

Appellant nevertheless contends that none of these facts, nor all of them combined, "created a lien upon the ship in favor of the libellants at the place where the cargo was landed, stored and left."

1. Because the Act 24 Vic., ch. 10, does not create a maritime lien, nor profess to do so.

It first "extends the jurisdiction" of the High Court of Admiralty, (Title, sec. 6, &c.,) and then "improves the practice" by enacting, among other things: Sec. 35. "The jurisdiction conferred by this Act on the High Court of Admiralty may be exercised either by proceedings *in rem.*, or by proceedings *in personam.*"

The Act by its terms is confined to *England*, (see preamble,) in which are besides, by implication of law, included only the dominion of Wales and the town of Berwick-upon-Tweed. It applies, and can apply to no other British territory.

20 Geo. 2, c. 42, sec. 3.

1 Broom's Com., p. 109.

The power to exercise a limited jurisdiction, conferred upon a local Court, by proceedings *in rem.*, i. e., by an attachment of the property, is not a creation of a maritime lien.

The Belfast, 7 Wall. 645.

No sort of *jus in re* results until process of the Court has been served in strict conformity with the requirements of the Act.

But, in the case of the "Maggie Hammond" the jurisdiction conferred upon the High Court of Admiralty has not been exercised, or even invoked, either by proceedings *in rem*, or *in personam*.

So there can be no pretence that a maritime lien has been created in favor of libellants by 24 Vic., ch. 10; and, if not, then, as already shown, none exists.

If the High Court of Admiralty had rightfully assumed jurisdiction in the case of the "Maggie Hammond," while she was yet at Cardiff, and had exercised it by proceedings *in rem*, and process duly served, and the ship had subsequently absconded, and arrived at Baltimore, it might, with some plausibility, be argued that a maritime lien had been created, which our Courts might with propriety be asked to enforce in the name of comity. But comity can hardly require our Courts first to create a maritime lien, and then to enforce it.

Suppose the master of the "Maggie Hammond," instead of sailing for Baltimore, with full intention of returning in time to perform his contract in the spring, had deliberately abandoned his original undertaking, and, leaving Appellee's iron at Cardiff, had gone to Montreal, (supposing it had been possible to get there,) thus being guilty of a clear breach of duty and contract;

and, thereupon Appellees had filed their libel against the ship in the Vice-Admiralty Court of Lower Canada, could they have successfully maintained their suit?

No; for the Act 24 Vic., ch. 10, does not confer jurisdiction on the Canadian Courts, as already shown, and they have no such jurisdiction independently of said Act (ante pp. 3, 4).

How, then, can it confer jurisdiction in the premises on the District Court of the United States for the District of Maryland?

Have Acts of Parliament more power in the United States than they have in British possessions, and have Appellees higher rights, under their own laws, in Courts of the United States, than they have in the tribunals of their own Province?

If a true maritime lien had been created by the Act, it might be recognized and enforced by comity, by Admiralty Courts anywhere, against the ship wherever found.

But it has been decided that a true maritime lien was not created by the Act in question. In the case of the Pacific, Brow. & Lush., 243, Dr. Lushington remarks, p. 246, "This, I think, shows that the material man has not a maritime lien, for a maritime lien accrues from the instant of the circumstances creating it, and not from the intervention of the Court." Again, p. 247, "The Act, as I have before stated, gives no lien to the material man, but only a right to proceed against the ship." See also,

The Troubadour, 1 Ec. & Ad. (L. R.) 304.
The Scio, " " 355.
In the Mary Ann " " 8,

Dr. Lushington remarks, p. 11, "There is a clear distinction between a maritime lien and a claim, the payment of which the Court has power to enforce from the ship and freight. A maritime lien springs into existence the moment the circumstances give birth to it, as damage, salvage and wages. But it does not follow that because a claim may, by act of parliament, be enforceable against the *res*, that therefore it is created a maritime lien. Besides, looking to the whole Act, it is impossible to maintain that a maritime lien is created by every one of numerous sections which commence with the words 'the High Court of Admiralty shall have jurisdiction.' * * * 'They mean only what they purport to say, neither more nor less; that is, that the Court shall take judicial cognizance of the cases provided for." The Court then proceeds to argue, p. 12, that the Act covers a multitude of subjects, over some of which the Admiralty Court had previously had control; and in reference to some of which it had always been bound to recognize the existence of a maritime lien. That the

Act of 24 Vic. was not intended to disturb this pre-existing lien; but that the Act *proprio vigore* creates none.

But we have already seen (ante p. 5) that the High Court of Admiralty can only take cognizance of cases like the present by virtue of the Act 24 Vic., that prior to that act it would have had no jurisdiction whatsoever over them, therefore no lien was created upon the ship in favor of libellants at the place where the cargo was landed, stored and left.

See remarks of Mr. Morris in his lecture on the "Juris. and Prac. of the High Court of Adm." pp. 19, 33.

The Bold Brecleugh, 7 Moore, P. C. Cases 267.
The Europa, 2 Moore, P. C. Cases (N. S.) p. 20.
The Rock Island Bridge, 6 Wall, p. 213.

A maritime lien travels with the ship wherever she goes, reverts back to the time of the circumstances which gave it birth, can only be satisfied by payment, and takes precedence of liens *ex contractû*.

The Rock Island Bridge, 6 Wall, 213.
Vandewater *vs.* Mills, 19 Howard, 89.
Williams & Bruce, Adm. Prac., pp. 65, 66.

But it has been expressly decided that the lien, (if such it may be called,) provided for by the Act 24 Vic., ch. 10, which only comes into existence on the filing of the libel, is subject to any registered mortgage.

The Mary Ann, 1 Ec. and Ad. (L. R.) 11.
The Scio, " " " 355.
The Troubadour, " " " 305.
The Pacific, Brow. & Lush. 246.

So this lien lacks one of the essential characteristics of a maritime lien. It is therefore not such a lien as our Courts should recognize or enforce. Comity does not require, nor policy permit our Courts to enforce *a mere municipal law of a foreign country*.

2 Parsons, Ship and Adm. p. 224.
The Courtney, Edw. Adm., 239.
The Madonna D'Idra, 1 Dods., 37.

2. Because in this case there was no "negligence or misconduct, breach of duty or breach of contract on the part of the owner, master or crew" of the Maggie Hammond, to create a lien in favor of libellants at the place where the cargo was landed, stored and left.

It is hereinafter shown (post p. 10, 11) that *lex loci delicti commissi* must govern in this view of the case.

It is therefore simply a question whether or not there was any negligence or breach of the law and customs of English trade cognizable by English Admiralty Courts..

There was no breach of duty in not trans-shipping, because the English law does not require it.

The Bahia, Brow. & Lush., 61, 292.

Even though the American rule be different, which Appellant denies, in cases like the present, where the cargo was not perishable (pig iron) and the ship capable of being repaired in a reasonable time (27 days) which was actually done, (Propeller Niagara *vs.* Cordes, 21 How., 24, 25; Hugg *vs.* Augusta Ins. Co., 7 How., 604,) and because it was in fact impossible to trans-ship.

See Appellants' brief, p. 3, 4, 5, 6, 7.

Landing and storing the cargo was necessary to enable the ship to go into dry-dock for repairs.

There was no breach of duty in not reloading the cargo in the "Maggie Hammond" and sailing for Montreal after November 4th, 1866, because all the witnesses (except Watson) testify that the season was then too far advanced, and that the course and custom of trade between Great Britain and Canada would not justify such a venture. *Howes*, p. 15. *Mosher*, p. 18. *Willians*, p. 56. *Fraser*, p. 65. *Ford*, Ad. Ev , p. 6. *Goodwin*, do. p. 7. *Coward*, do. p. 9. *Edwards*, do. pp. 10, 11. *Allan*, do. pp. 11, 12, 13. *De Wolf*, do. pp. 13, 14. *North*, do. p. 15. *Singleton*, do. pp. 16, 17. *Jack*, do. pp. 18, 19.

See The Convoys Wheat, 3 Wall, 230.

If, then, there was any breach at Cardiff, it was in accepting new employment. But doing so under the circumstances disclosed by the record, constituted no breach according to English law.

In the case of The Bahia, Brow. & Lush., 61, 292, Dr. Lushington decided that a master, at a harbor of refuge, is entitled to a reasonable time within which to exercise his discretion as to the course that he will pursue.

That a deliberate *abandonment* of the original ship, unaccompanied with any expression of a purpose to carry in another vessel, is *not* an abandonment of the undertaking. Because *non constat* that the master will not think better of it, and perform his duty.

Abandonment can only be inferred from a deliberate declaration or as a necessary conclusion from unequivocal acts, all of which were wanting in this case.

It is needless to argue that no lien was created in favor of libellants by the Common Law of England, or that if there had been it could have any bearing upon this case.

Appellant further contends that even if undertaking to carry the cargo laden at Cardiff was in itself a breach of duty under the English (Welsh) law, yet, looking to the impossibility of transporting Appellee's iron to Canada until the Spring of 1867, and also to the time when this libel was filed, which was in February, 1867, such breach of duty was *damnum absque injuriâ*, and could not give a lien on the vessel.

The Plymouth, 3 Wall. 33.

III.

"If the Libellants did not acquire any lien, either by the law of the place where the contract was made, or by the law of the place where the cargo was landed, stored and left, did the District Court have jurisdiction of the libel, and of the cause of action therein set forth?"

The contract was a British contract, as to all the parties connected with it, mode of performance, place where made, place where it was to be completed and performed, and the ship itself. Nor does it appear that any citizen of the United States has any interest whatsoever in maintaining the claim of Libellants. In such cases our courts are in no wise bound to assume jurisdiction, (2 Parsons, Ship. & Adm., 223–230, and authorities cited,) but, if they do, *lex loci contractûs*, or *lex loci delicti commissi* must govern.

In the case of the Halley, decided in 1867, 37 Law J. Rep. (N. S.) Adm. 1, Sir Robert Phillimore reviews the authorities, English, Continental and American, at great length.

The short note says: "The owners of a Norwegian vessel having sued, in the High Court of Admiralty, a British vessel, for damage done by collision, are entitled as to compulsory pilotage to rely upon the law of Belgium, within whose territorial waters the collision took place."

Page 8, the Court says: "Having regard, then, to the fact that the *lex fori* is founded upon special considerations of public policy applicable only to British territory, and that the admission of the foreign law, the *lex loci delicti commissi*, to govern this case, is not prevented by reason of its repugnance to natural justice, or to public policy, if the question before me were as to the law

which ought to govern the fulfilment of the obligation arising out of an ordinary contract made in Belgian territories, it could not, I think, be successfully contended that I ought to apply the English law to such a case. To such a contract I might apply the principle of Lord Stowell's judgment," &c., "and adopting, with a slight alteration, his very words, say, this contract being established in an English Court, must be adjudicated according to the principle of the English law. But the only principle applicable to such a case by the law of England, is that the character of this obligation must be tried according to the law of the country in which it had its origin. Having furnished this principle, the law of England withdraws altogether, and leaves the legal question to the exclusive judgment of the law of Belgium."

The Court relies on the decision of the Supreme Court delivered by Mr. Ch. J. Taney, in Smith *vs.* Condry, 1 How. 28, and quotes from it at length, p. 11.

Appellant relies upon these decisions of the Supreme Court, and of the High Court of Admiralty, and the references therein contained, as settling the principle stated above, and deems the citation of other authorities needless.

And Appellant contends that an Admiralty Court is peculiarly bound to refuse to set up and enforce a lien recognized by the *lex fori*, where such lien is denied by the *lex loci contractûs*, and even where *lex loci* gives a lien, an Admiralty Court will not enforce it when the lien is accompanied with conditions and limitations inconsistent with the rules and principles which govern maritime liens.

The Steamer S. Lawrence, 1 Black, 530.
Maguire *vs.* Card., 21 How. 251.

Although bills of lading and charter parties are unquestionably maritime contracts and the laws of the United States give a lien on the ship in favor of the freighter, and reciprocal rights to the shipper, this Court has in several cases decided that the lien thus given may be modified, extended, or excluded altogether, by agreement of parties.

Bird of Paradise, 5 Wall. 555.

If, by the law of the place where the contract was made, a maritime lien had been given, such a lien would become a part of the contract; but, as by the law of the place where the contract was made, no such lien is given, it is necessarily excluded from the contract, and to give such a lien would violate the contract.

Bronson *vs.* Kinzie, 1 How., 311.

Appellant further contends that the question of lien or no lien is a matter strictly appertaining to the *rights* of the parties, and is in no respect a mere matter of remedy.

In The Infanta, Abbott Adm. R., 263, Judge Betts says, page 267: "This Court originates no right in respect to debts or contracts which did not accompany their inception.

"It administers the general maritime law, but will never, in controversies wholly of foreign origin, and between citizens and subjects of the same foreign country, give to either a hypothecation or privilege which he would not have possessed in the home and common jurisdiction. *The lien is regarded as being, in effect, an element of the original contract itself, and inherent therein.*"

The same principle is strongly stated in The Rock Island Bridge, 6 Wall., 215.

Pages 267–8, Abbott Adm. R., Judge Betts continues: The Admiralty Courts of the United States "will not entertain jurisdiction *in rem.* over cases which, in the place of their origin, would not be entitled to that relief. And as they would not permit the citizens of a State which denies a lien upon domestic vessels for repairs and supplies to pursue a vessel into another State allowing such a remedy against its vessels, and to enforce it there, so, for more cogent reasons, in respect to the subjects and ships of a foreign country a privilege denied them at home would be refused them here."

To same effect, see

The Belfast, 7 Wall., 645.
The General Smith, 4 Wheat., 438.
Peyroux *vs.* Howard, 7 Peters, 324.
The Marion, 1 Story, 68.
Read *vs.* Hull, of Brig, *ib.*, 244
The Nestor, 1 Sumn., 73.

So, then, no lien can be set up and enforced in our courts unless it existed by the law of the place where the contract was made.

In other words our Courts will not, in favor of foreigners, import into a foreign contract a right denied to them by their own laws, and then proceed to enforce that right by an American remedy.

A well-ascertained foreign right our Courts may recognize, if they see fit to do so, and enforce it by their own peculiar remedy,

but, in all cases, the right must first exist, inherent in the contract, before any remedy can be applied to enforce it.

But it has already been shown (*ante* pp. 1-10) that no lien existed, or was created in favor of libellants, by either the law of Scotland, of England, of Wales, or of Canada. Therefore, none could be enforced, and the District Court had not jurisdiction of the libel and of the cause of action therein set forth, and the libel must be dismissed.

F. W. BRUNE,
ARTHUR GEO. BROWN,
for Appellant.

Supreme Court.

No. 107.

December Term, 1869.

DURKEE,

Claimant of the Ship Maggie Hammond,

vs.

MORLAND, AND OTHERS.

ARGUMENT ON BEHALF OF THE APPELLEES.

S. T. WALLIS,
JOHN H. THOMAS,
Proctors for Appellees.

Murphy & Co. Printers, Booksellers and Stationers, 182 Baltimore street, Baltimore

Supreme Court.

No. 107.

December Term, 1869.

DURKEE,

Claimant of the Ship Maggie Hammond,

vs.

MORLAND, AND OTHERS.

ARGUMENT ON BEHALF OF THE APPELLEES.

The questions presented for argument, by the Court's order of March 21st, are the following:

1st. Had the libellants a lien upon the ship for the performance of the contract of affreightment at the place where the contract was made, or by the law of the place where the contract was to be performed?

2d. Did the act of the master in landing and storing the goods, and accepting new employment for the ship when the repairs were completed, create a lien upon the ship in favor of the libellants at the place where the cargo was landed, stored, and left?

3d. If the libellants did not acquire any lien either by the law of the place where the contract was made, or by the law of the place where the cargo was landed, stored and left, did the District Court have jurisdiction of the libel and of the cause of action therein set forth?

The first and second of these enquiries have a point in common. Neither of them can be answered without determining a question of foreign law. The shipment was made and the bill of lading executed in Scotland. The cargo was to be delivered in Canada, and was landed and left in Wales. Each of these three localities has its separate system of jurisprudence, Wales being governed by the English law. The Scotch and colonial laws are held by the English Courts to be foreign laws, and are required to be proven, as matters of fact, precisely as the laws of foreign nations.

See 1 Phillipps on Evidence, 4 American Edition, 623.
2 " " " " 427,
and cases there cited.

Nay, the English tribunals are so far from recognizing any difference, in this regard, in favor of the Scottish law, that they refuse to accept one of their own decisions in a reported case as evidence of what that law is, in a subsequent case precisely similar. They require it to be proven in each particular case, like any other matter of fact.

McCormick vs. Garnett, 27 E. L. and E. Rep., 337.

In the absence of proof, the foreign law and our own are presumed to be the same, and in the case at bar there is no proof of any of the foreign laws under discussion. No objection was taken below, to the jurisdiction of the Court, on any ground. The suggestion of a difference between the *lex fori* and the *lex loci* was made orally, and for the first time, during the argument in the Supreme Court. No testimony was taken by the claimant to show that the foreign laws differ in any respect from the gen-

eral maritime law, as administered by the Admiralty Courts of this country, and the fact that they do not so differ being thus conceded, throughout, the Appellees had no reason for taking testimony to establish what was not disputed. The Proctors of the Appellees did not therefore regard the question of foreign law as in the case, the ruling of the Supreme Court in Ennis vs. Smith, (14 Howard, 426-7,) as well as in prior cases, seeming to them to preclude the Appellant from mooting, in the tribunal of last resort, a question of fact not raised by the record.

Although the mode and quality of proof required to establish the *factum* of a foreign law have been variously stated by the highest tribunals, it is believed that there is no case in which proof of some sort, is not absolutely demanded. The House of Lords, in the Sussex Peerage case, (11 Clarke & Finnelly, 115,) and the Queen's Bench in the case of the Baron De Bode, (8 Adolphus & Ellis, New Series, 250,) have established the doctrine, in England, that even where the foreign law depends upon a statute, decree, or other written instrument, the production and authentication of the writing are not sufficient. There must be further proof, by experts, showing what the law is held to be, in the foreign country, "by exposition, interpretation and adjudication." It is not what the written law contains that is the subject of enquiry, says Lord Denman, (8 Adol. & El., N. S., 251,) but "its effect and the state of law resulting from it." Indeed, the statute, when authenticated and interpreted, can at best only show what the law became, by its enactment. The question as to what it is—as to whether it has not, since, been altered or repealed, is still an open matter of fact, of which the courts of another jurisdiction cannot have judicial knowledge, and which only the professional experts of the foreign country can determine. Whether the Supreme Court, in a case involving the precise question, would arrive at the same conclusion as the English tribunals, or whether it would hold that the authenticated

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statute is not only evidence, as determined in Ennis vs. Smith, but sufficient evidence, of the foreign law, does not seem material to the present discussion. This Court has indubitably held that a foreign law is a fact, to be somehow proven as a fact. Our only statutory enactment on the subject, (Act of 2d March, 1849, sec. 1, 9 Statutes at Large, 350,) is confined to cases where land titles of the U. S. may come into question, and even in those cases the certified copies of foreign laws, anthenticated as the statute directs, are merely allowed to be "*read in evidence*, equally with the originals thereof." There is no statute, and there is believed to be no case, which authorizes the reading, at the bar of the appellate tribunal, of any foreign law, no matter how well authenticated, which has not been introduced in evidence below, and made part of the record. It would be, we respectfully submit, as complete a departure from principle and authority as to permit either party to introduce as evidence, for the first time, at the hearing on appeal, a duly authenticated copy of a deed or other record, which is proved by its authentication.

It would be especially anomalous if the laws of the sister kingdom of Scotland and of the British Colonies, which are required to be proven as facts in the English Courts, could be read in the Courts of the United States, as if they were our own statutes, or collected from decided cases or commentaries, which are not proof of them before the home tribunals.

The difficulty which the wisdom of the rule avoids, is particularly felt in attempting to discuss the questions which the Court has stated in the present case. Except as to the English law, which has been greatly modified by statute of late years, those questions do not admit a statutory solution, and, after all, the best result which the research of counsel can arrive at, must fall far short of the certainty which would have been given by the testimony of professional witnesses. Indeed the suggestion of a doubt by the Court itself, in regard to the jurisdiction, after the statement of its impression to the contrary during the argument,

cannot but inspire counsel with more than usual distrust of their ability, in the total absence of proof, to deal satisfactorily with the points proposed to them.

In regard to the law of Scotland, which was the place of the contract, the record furnishes some little light, though the evidence from which it is derived was not introduced for any such purpose. It will be found in a portion of the correspondence, produced by the Appellant, through Mr. Alexander Jack, one of his witnesses, and another letter of the same person to be found in another place. On page 29 of the additional testimony, it will be seen that Mr. Jack telegraphs from Glasgow, where he resides, to have the Maggie Hammond arrested. He is informed that his message was received too late. On the next day, 22d November, 1866, he writes that he had been deceived by the shipping agent, and adds: "This vessel, if in Scotland, we could arrest, but I am afraid it cannot be done in England." (See Record, p. 51.) Whatever this may be worth, it is all that the record supplies.

In the case of Harmer vs. Bell, (22 Engl. L. and E., 66,) Erskine's Institutes of the Law of Scotland and Bell's Commentaries on Commercial Law, are referred to by Court and counsel as explaining the maritime jurisdiction in Scotland. By reference to the 1st volume of the latter work, (Edition of 1826, p. 497 to 500 inclusive,) and to Erskine, p. 35, it will be seen that the Scotch Admiralty is altogether free from the restrictions and embarrassments which so much narrowed the jurisdiction in England, and is governed like our own Admiralty, by the broader rules and principles of the ancient usages, customs, and ordinances of the sea. It has "the decision of all maritime and sea-faring causes," and the rules which govern its jurisdiction and remedies are derived from the identical sources to which this Honorable Court itself resorted in Vandewater vs. Mills, (19 Howard, 90,) for the principle that "the ship is bound to the merchandize and the merchandize to the ship." Bell specially

enumerates (*ubi supra*) the Rhodian Laws, *Il consolato del mare*, the laws of Oleron and Wisbuy, the *Ordonnance de la Marine* and the *Code de Commerce*, among the collections and treatises which the Scotch Admiralty recognizes as authority. If the Court will be pleased to refer to the elaborate and able opinion of Judge Ware, (The Rebecca, 1 Ware, 190,) in which the doctrine afterwards established in Freeman vs. Buckingham, (18 Howard, 188,) and Vandewater vs. Mills, (*ubi supra*) was pronounced to be the admiralty law of this country many years before the latter cases were decided, it will be seen in detail, how the Scotch law and our own, as to the lien in cases like the present, have sprung from one and the same origin. But the existence of the lien in this case under the law of Scotland, does not depend upon inference. It is placed beyond all question by the classification of liens upon ships in bankruptcy, which is given in Bell's Commentaries, (vol. 2, p. 512,) where the lien of freighters stands fourth in order, after carpenters, seamen and mates, and bottomry bond holders, but in priority to ship's husbands, mortgagees, and general creditors. This same classification, Emerigon derives (ch. 12, sec. 4,) from the *Ordonnance de la Marine*, expressing his own opinion, at the same time, (p. 236, 237, of Hall's translation,) that the lien of the freighter should stand first, the *Consolato del mare* in fact giving it the second rank.

The amplitude of the Scottish Admiralty Jurisdiction and the general conformity of the laws of Scotland, concerning commerce and contracts, with the civil law, are further recognized in 2 Browne's Civil and Admiralty Law, p. 30, and in Christian's note 4, to 1 Blackstone's Commentaries, p. 95. The Statute of II George IV, chapter 69, sec. 21, (1830, p. 320,) by which the admiralty jurisdiction is transferred to the Court of Session, does not in any way restrict or impair it, so that the proctors for the Appellees are unable to discover any reason for doubting that the lien set up in these proceedings

attached to the ship from the moment that the cargo went on board, precisely as if the shipment had been made in any port of this country.

As to the scope and rules of admiralty jurisdiction in Canada, where the cargo in controversy was to be delivered, the Appellees' proctors have found no information in any books within their reach, and the difficulty of their doing so would seem to be but another illustration of the propriety of requiring all such matters to be established by proof. They have discovered no legislation which throws any light upon the question.—The general rule, however, which interprets the contract according to the law of the place of performance can hardly be applicable, it is submitted, to bills of lading, the obligations of which are to be performed partly at the port of shipment and partly on the high seas, as well as, in part, at the port of destination. In the case of Lloyd vs. Guibert, (Law Reports, 1 Queen's Bench, 122,) on error from the Queen's Bench, it was determined in the Exchequer Chamber, that in such cases, in the absence of circumstances indicating a different intention, the law of the place of the contract is *primâ facie* that which the parties had in contemplation. There the vessel was French, the charterer a British subject, the place of the contract a Danish West India Island, and the voyage, from Hayti to Havre, London or Liverpool. As if to add to the complication the ship had put into a Portuguese port for repairs. In this maze of nationalities, the Exchequer Chamber held, affirming the judgment below, that as the action was against the owners personally, and as the law of France determined the authority of the master, as between him and his owners, to bind them, it was safest, on the whole, to let the French law determine their liability. Such was inferred to have been the intention of the parties, from the subject matter and the surrounding circumstances. This decision was in accordance with the ruling of Judge Story, in the common law case of Pope vs. Nickerson, 3 Story, 465, and it further reaffirms

the rule, that unless the foreign law set up be established in proof, the Courts of England will not notice it, but proceed according to the English law.

The reasoning and rules applicable to cases where the personal liability of the ship owner is sought to be reached, being so different from those which apply where the ship only is affected —the one being matter of express agency, the other of agency implied by the general maritime law—the conclusion of the Exchequer Chamber upon the facts of the particular case before it, would hardly control the present controversy. If it did, the result would be anomalous, for the Appellant resides, as the answer and evidence show, at Yarmouth, in Nova Scotia, the maritime law of which—if indeed it has any peculiar to itself—could with difficulty, in the absence of intention proven, be regarded as within the contemplation of the Scottish shippers or the Canadian consignees. Whatever doubt may have arisen in the Exchequer chamber as to the existence of any general law of the sea (p. 124,) making ship-owners absolutely liable, personally, for the master's acts, there can surely be none as to the general recognition, among commercial nations, of the right of the master, without express authority, to bind the ship in certain cases. Upon this general maritime rule, it would seem right, upon authority as well as reason, to fall back, in cases proceeding *in rem.*, if there is to be any departure from the law of the place of the contract. The Supreme Court of Massachusetts, in a recent case (Chase *vs.* The Alliance Insurance Co., 9 Allen, 311,) involving rights dependant upon a charter-party made in Scotland, recognized the law of the latter country as controlling, and decided that the Scotch law would be regarded as the same with that of Massachusetts, unless it should otherwise appear.

The question of lien under the law of the place where the cargo was landed and left, involves as well the Scottish as the English law, for if the ship was subject to a lien in favor of the shipper under the law of the place of contract, certainly that lien

must have been fixed upon her by the violation of the contract and at the time and place where it was violated. And this, without reference to the jurisdiction of the English Admiralty Court to enforce the lien by process *in rem*. This latter jurisdiction, it must be conceded, did not exist before the recent statutes of Victoria, but it seems equally clear upon authority that the lien, though not enforceable, nevertheless existed as part of the English Admiralty law. The elementary writers are believed to be unanimous upon this point. Lord Tenterden (Abbott on Shipping, marg., pp. 126, 127 and 285,) uses the strongest language in regard to it. On page 126, he says: "When this contract (a charter party) is made by the master in a foreign port, in the usual course of the ship's employment and under circumstances which do not afford evidence of fraud, or when it is made by him at the ship's home under circumstances which afford evidence of the assent of the owners, the ship and freight, and therefore, indirectly, the owners also to the amount of the value of the ship and freight are by the marine law bound to the performance. 'The ship is bound to the merchandise and the merchandise to the ship' are the words of Cleirac. * * * It is true that this principle of the maritime law, by which the ship itself *in specie* is considered as a security to the merchant who lades goods on board of it *cannot be carried into effect* in this country, because the Court of Admiralty, in which alone proceedings can be carried on against the ship, has no jurisdiction in such case." On page 285, he says further: "But, although the ship and the freight are by the terms of a charter-party expressed to be bound to the performance of the covenants on the part of the owners or master, and this is conformable to the maritime law, yet, as I have before observed, there does not appear to be, at present, any mode of obtaining, in this country, the benefit of the security of the ship itself, *in specie*, for the performance of such a contract, made here." Nothing can be more clear and decided than this language in drawing a distinction

between the lien which exists, and the remedy for its enforcement, which does not exist. The very fact that liens which are tacit under the maritime law and liens expressly given by the written contract, are placed on the same footing, demonstrates that the existence of the lien is not affected by the want of a jurisdiction to enforce it. It is impossible to say that an express lien, not forbidden by law, and given by the contract, has no existence, because there is no Court whose jurisdiction applies to it, and so the tacit lien, which is as much a lien by the maritime law as if given by the contract, continues to be a lien, though as to remedy it is in the same predicament. This is the interpretation given by Chancellor Kent to the language of Lord Tenterden, for after stating the rule from Cleirac, he says in a note, (3 Kent's Com., 8th Edition, p. 281, n. a,) "Lord Tenterden admits this to be the rule of the maritime law but denies that the Court of Admiralty in England has jurisdiction to enforce the lien upon the ship in behalf of the shipper. That principle of maritime law therefore *lays dormant*, from the want of a Court of Law or Equity to enforce it *in rem*." Judge Conkling (Admiralty Ch. 4, p. 123,) adopts the same view and after stating it to be an established maxim of the general maritime law that "the ship is bound to the merchandize, and the merchandize to the ship," proceeds to say that "in England, though this maxim as a general principle is conceded by the English elementary writers, it is *to a great extent ineffectual*, for want of any Court to enforce it by process *in rem*, for while the Courts of common law are, themselves, incompetent to afford this remedy, they prohibit the Court of Admiralty, the only tribunal adequate to this purpose from doing so." Judge Ware, in the case of the Rebecca, already cited, (1 Ware, 192,) after going over the whole ground comes to the conclusion that although the lien "lies barren and dormant" in England "for the want of a Court to enforce it," it is still admitted to "exist as a rule of law." The same learned Judge arrives at the same conclusion in the case of The

Phebe, (1 Ware, 270,) where he decides that "the principle that the ship and freight are bound for the acts of the master has been incorporated into the maritime jurisprudence of England, though from the limited jurisdiction of the Admiralty, the shipper can not have the full benefit of it." These extracts which have been given at length, for the convenience of the Court, appear sufficiently to establish the proposition in support of which they are adduced, viz: that the lien existed, in England as here, independently of statute, notwithstanding the absence in England of process to enforce it. And it will be observed that what was wanting in England was not merely jurisdiction of the remedy, but of the contract, for the Admiralty, independently of the statute, had no more right to grant process *in personam* than *in rem*, in a case of maritime contract. Yet it could hardly be contended that lawful maritime contracts made in England were not capable of enforcement, in foreign tribunals, by ordinary process as at common law, even although by English legislation the jurisdiction for their enforcement should be taken away from the English Common Law Courts, as it has been taken, by prohibition, from the Admiralty. (2 Curtis, 405, 3 Ves. Jr., 446, post 16.)

But whatever difficulty may have formerly existed as to jurisdiction in England has, it is respectfully submitted, been entirely removed, by legislation, during the present reign.

The Act of 24 and 25 Victoria, called the Admiralty Court Act, (1861, ch. 10, p. 132,) in its sixth section, gives jurisdiction to the High Court of Admiralty, (to be exercised, under its thirty-fifth section, "either by proceedings *in rem*, or proceedings *in personam*,") "over any claim by the owner or consignee, or assignee of any bill of lading of any goods carried into any port in England or Wales in any ship, for damage done to the goods or any part thereof, by the negligence or misconduct of, or for any breach of duty or breach of contract on the part of the owner, master, or crew of the ship, unless it is shown to the

satisfaction of the Court that at the time of the institution of the cause, any owner or part owner of the ship is domiciled in England or Wales."

In the cases of the Bahia, (Browning & Lushington, 61,) and the Ironsides, (Lushington, 468,) the words, "carried into England or Wales," are decided to have been purposely employed in their widest signification, and the Statute, it is said, was not intended to be restricted to cases of importation. The iron then, in this case, was carried into a port of Wales. The sole owner of the ship was domiciled in Yarmouth, Nova Scotia, and not in England or Wales. The complaint is of breach of duty and contract on the part of the master and the ship. The case therefore comes directly within the provisions and scope of the statute—indeed, the case of the Bahia is substantially identical with it. Unless, therefore, it can be successfully argued that giving a remedy against the ship by proceeding *in rem* does not impose a lien, there seems to be no room for dispute as to the existence of the lien, by virtue of and under the statute. If the proctors of the Appellees are right in their view heretofore presented, that the lien existed previously in England, and that nothing was needed but jurisdiction for its enforcement, the necessity of deriving a lien from the statute is not imposed on them, and the statute will be regarded as authorizing an enforcement *pro tanto*, of a lien already existing. But can it be successfully contended that the lien is not given by the statute? The only color for such a contention is to be found in certain language used by Dr. Lushington in the cases of The Pacific, (3 Browning & Lushington, 243,) The Troubadour, (Law Reports, 1 Eccl. and Adm., 302,) and The Scio, (Ib., 355,) to the effect that the lien of a material man does not arise until the institution of proceedings *in rem*. Properly construed, these cases, it is submitted, determined nothing but questions of priority between the material men and mortgagees, and it was in favor of these last, and not as between the owner and the

material man that the date of the proceeding *in rem* was held to fix the date of the lien. But whatever may have been the extent to which the learned Judge would have carried the doctrine announced by him, it is quite clear that it is not countenanced by the cases of highest authority. In Harmer *vs.* Bell, (22 Eng. Law, and E. Rep., 71,) the Privy Council had occasion to canvass the unsoundness of Dr. Lushington's views upon the subject of liens and proceedings *in rem*, and laid down the doctrine of maritime lien, definitively and exactly, in the language of Mr. Justice Story in the case of The Nestor, (1 Sumner, 78.)

On page 72 of the English Report, will be found the express determination "that *in all cases where a proceeding in rem is the proper course there a maritime lien exists*, which gives a privilege or claim upon the thing, to be enforced by legal process. This claim or privilege travels with the thing into whosesover possession it may come. It is inchoate from the moment the claim or privilege attaches, and when carried into effect by legal process, by a proceeding *in rem*, relates back to the period when it first attached." It is true that the lien, in that case, grew out of a collision, but Sir John Jervis (p. 71,) precluded all pretence of a distinction between liens, by saying explicitly that "on all proceedings *in rem*, whatever be the foundation of the jurisdiction, the warrant is the same, and the proceedings are conducted in the same form, and there is no reason for saying that a different rule is to prevail where tne foundation of the jurisdiction is collision, from that which is admitted to be the practise when the suit is instituted for salvage, or the recovery of wages against the ship." This doctrine is reaffirmed by Sir Robert Phillimore, in the case of the Feronia, (Law Reports, 2 Adm. and Eccl., 73,) decided in 1868. Dr. Lushington himself appears to have recognized it himself in the case of the Isabella A. Clarke, (Browning & Lush., 32,) and to have adopted it as applied to cases of collision in The Bold Buccleugh, (3 Wm. Rob., 220,) which was the case reviewed in Harmer vs. Bell. Indeed, to determine that

the lien does not follow the granting of the jurisdiction *in rem*, because jurisdiction *in personam* is granted also, would be equivalent to saying that the security of the injured party is diminished by giving him a choice of remedies. Such has never been regarded in this country as the effect of the cumulative remedies given by the Admiralty rules of the Supreme Court, and if the doctrine objected to were true in principle, it ought to prevent the lien from attaching until suit brought in cases of collision also, inasmuch as there is a personal liability in those cases, as well as responsibility under proceedings *in rem*.

If the conclusions respectfully submitted in this argument as to the first and second points proposed by the Court are sound, the matter of the third enquiry does not of course require discussion. But the proctors of the Appellees are not at liberty to act upon that presumption. Before, however, entering upon the immediate question presented, it seems proper to observe that even if the views of Dr. Lushington, as to the time when the lien arises under the statute, should commend themselves to the Court's approval, the jurisdiction of the District Court would nevertheless not be affected by that ruling. If the injured shipper, under the law of the place where the contract was violated, could have found his remedy by a proceeding *in rem*, the ship-owner certainly cannot complain that the same proceeding is taken, for the same wrong, in a Court of corresponding jurisdiction, where the offending *res* is found. The proceeding *in rem*, after all, is but "a mode of proceeding and process," as defined by this Honorable Court, in the cases of the St. Lawrence and the Potomac, (1 Black, 526, and 2 Black, 581,) and its allowance or refusal constitutes no "question of jurisdiction." In determining this, the Court did but re-affirm what it had held after great consideration in the case of the New Jersey Steam Navigation Company vs. The Merchants' Bank, (6 How., 392,) viz: that "if the cause is a maritime cause, subject to Ad-

miralty cognizance, jurisdiction is complete over the person as well as over the ship; it must, in its nature, be complete, for it cannot be confined to one of the remedies on the contract, when the other is within its cognizance."

Carrying out these adjudications to their logical result, it would seem to follow, that if the subject-matter of the controversy be within the Admiralty jurisdiction of the District Courts, they may apply any of the remedies appropriate here, to cases where the contract was made abroad, notwithstanding the remedy so applied would not have been granted in the tribunals of the place of the contract. In other words, they may issue process *in rem*, although, in the foreign Court, there would be none but personal process allowed. The language of Judge Story on this point (Conflict of Laws, sec. 558,) is as broad as it could be made. "In regard to the rights and merits involved in actions, the law of the place where they originated is to be followed, but the forms of remedies and the order of judicial proceedings are to be according to the place where the action is instituted, without any regard to the domicile of the parties, the origin of the right or the country of the act."

This doctrine is recognized and adopted to its full extent, by Dr. Lushington, in the case of The Zollverein, (Swab., 98,) and further carried out by him in the cases of The Milford, (Swab., 362,) and the Jonathan Goodhue, (Swab., 526,) where he allowed to foreign ship masters the lien given to British masters by sec. 191 of the Merchant Shipping Act of 1854, although, under the laws of the countries to which the ships belonged, (one of them American,) the masters had no such lien. If this be sound law, where the lien and the remedy were given by a statute of the *forum* regulating its own maritime affairs, the rule must be applied with far less difficulty to cases where the remedy is administered in the ordinary course of the Court and by virtue only of its general jurisdiction and practice. The general principle as to the prevalence of the *lex fori* in the matter of the remedy is discussed

and determined, to the preceding effect, in Bank of the U. S. vs. Donnelly, (8 Peters, 372,) followed by Wilson vs. Hunt, (13 Peters, 378.) The Maryland case of Trasher vs. Everhart, 3 Gill & Johns., 245, which is cited with approbation by this Court, in the case in 8 Peters, not only states the principle, but gives as sufficient reasons for it, (if there were none other) the necessity which would exist of enquiring into foreign laws, to determine the nature of the remedy, and the difficulty and delay of such enquiries. The Supreme Court of Louisiana, (Saul vs. his creditors, 17 Martin, 595,) reasons still further from the difficulty of such enquiries and the uncertainty of their results, and applies its conclusions to the whole subject of foreign laws—right as well as remedy. "In the conflict of laws," it says, "it must often be a matter of doubt which should prevail, and whenever that doubt does exist, the Court which decides will prefer the law of its own country to that of the stranger." Whether such reasoning be or be not regarded by this Court as of sufficient force to justify it in determining that the District Courts may apply the process *in rem* to a case, where the *lex loci* gives neither that process nor a maritime lien, it is respectfully submitted that where such a lien exists, though without the process, or the process is given without the lien, under the law of the place, there can be no question of the jurisdiction of the District Court to grant the process *in rem*, if the subject matter be of admiralty cognizance. Further reference is respectfully made in this connection to the case of The Young Mechanic (2 Curtis, 405,) in which it is determined, that a maritime lien is a right in itself, which may exist, independently of the process used to enforce it, just as a personal obligation may arise from a contract, though the law of the place may not afford a personal remedy. (Talleyrand vs. Boulanger, 3 Ves., Jr., 446. Flack vs. Holm, 1 Jac. & Walk., 405.)

The fact that all the parties to this proceeding are aliens, does not, in itself, and at this stage of the cause, furnish any ground,

it is submitted, for ousting, or even doubting, the jurisdiction. From the beginning of the controversy to the present moment, no such objection has been urged either orally or by the pleadings, or the brief, and although in the answer (p. 15) the Appellant denies the right of the Libellants to institute the proceedings "in a foreign country," this is not objected to because of the country's being foreign, but only "until the important question of the extent of the respondent's liability" shall have been ascertained. Under these circumstances, the case comes clearly within the decision in Mason vs. The Ship Blaireau, (2 Cranch, 240,) where all doubts of the jurisdiction are said to be removed when the parties assent to it. But the Court went farther, even in that case, and held, at that early day, that the question of adjudicating between foreigners was one rather of policy than jurisdiction, and that the considerations of public convenience overbalanced those to the contrary.

In later cases this doctrine has been expanded, and Mr. Justice Betts has demonstrated, in an able and elaborate opinion, (Davis vs. Leslie, Abbott Adm. Rep., 131 et. seq.,) that jurisdiction, as between foreigners, is complete, though the exercise of it is discretionary, and that the same rule is adopted in England as in this country. In the case of the Jerusalem, (2 Gallison, 191,) the jurisdiction between aliens in a proceeding *in rem* is maintained by Mr. Justice Story against the protest of the claimant. This appears to be now recognized by the most authoritative books of practice as the state of the law, especially as to libels *in rem.* (Conkling's Admiralty, 33 to 35; 1 Abbott's Pract. U. S. Courts, 355, 356; and also The Bee, Ware, 332; The Havana, 1 Sprague, 402; The Ada, Davies, 409.)

In the dissenting opinion of Chief Justice Taney, in Taylor vs. Carryll, 20 Howard 611, not only does the doctrine announced receive the high sanction of his authority—it not being a point on which he differed from the court—but it is added that the lien, as between foreigners, is always administered in our courts by process *in rem*, on principles of comity: that it is a matter

of sound judicial discretion and not of jurisdiction, and like all matters of discretion cannot be the subject of revision, in the Supreme Court, or a ground of appeal to it. In the present case the exercise of the discretion was not only lawful but just. The port of Baltimore is much nearer to the places of residence of both parties than any port of Great Britain. It was as easy of access to one party as the other, and the ship was within the jurisdiction of the District Court of Maryland, a fugitive, as it were, from her duty. There was no reason to believe that she would soon again be willingly placed within easy reach of remedial process on the shippers' behalf, and the process to which she was subjected was precisely that to which she would have had to submit in Scotland or England. If it was not, the fact could have been established without difficulty, by proper proof. Confessedly a wrong doer, as she was under the rules of the maritime law, her owner had no right to complain of her arrest, at a port where that law is fairly administered; where she would not have been, if she had complied with her obligations, and where her very presence, in violation of them, not only justified the worst suspicions, but served to render obvious the necessity for her seizure, and the duty of the Court, on grounds of comity, to grant it.

S. T. WALLIS,
JOHN H. THOMAS,
Proctors for Appellees.

NOTE.

[The case of Smith vs. Condry, (1 How., 28,) where the *lex loci* was held to govern in cases of collision, is respectfully referred to, as to the necessity of establishing foreign law by proof, where it is invoked as the law of the case, and not merely in the way of history or illustration. The British statutes were there proven below, and made part of the Bills of Exceptions.

XI The Act of 24 and 25 Victoria, ch. [redacted], (1861, p. 137,) makes special provision for the proof of foreign laws, for the guidance of the English Courts, and offers facilities to foreign Courts seeking proof of English law.

It has been assumed as clear law, in England as well as here, that it was a breach of contract and duty for the ship to desert her cargo at Cardiff, and sail on another voyage.

Abbott on Ship., marg. p. 364, 5.
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